No. 04-881

Title:	James Lockhart, Petitioner v. United States, et al.
Docketed:	December 30, 2004
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Nos.:	(02-35759)
Decision Date:	July 23, 2004
Rehearing Denied:	November 4, 2004

Questions Presented

~~Date~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~~~
Dec 29 2004	Petition for a writ of certiorari filed. (Response due January 31, 2005)
Jan 28 2005	Order extending time to file response to petition to and including March 3, 2005.
Feb 25 2005	Brief of respondent United States filed.
Mar 7 2005	Reply of petitioner James Lockhart filed.
Mar 9 2005	DISTRIBUTED for Conference of March 25, 2005.
Apr 6 2005	DISTRIBUTED for Conference of April 22, 2005.
Apr 25 2005	Petition GRANTED.
May 5 2005	Motion to dispense with printing the joint appendix filed by petitioner James Lockhart.
May 12 2005	Extension of time within which to file the joint appendix and petitioner's brief on the merits to and including July 8, 2005.
May 16 2005	Motion to dispense with printing the joint appendix filed by petitioner GRANTED.
Jul 7 2005	Brief of petitioner James Lockhart filed.
Jul 8 2005	Brief amici curiae of National Consumer Law Center, et al. filed.
Jul 15 2005	Extension of time within which to file respondents' brief on the merits to and including September 12, 2005.
Jul 20 2005	SET FOR ARGUMENT on November 2, 2005.
Aug 5 2005	CIRCULATED.
Sep 9 2005	Brief of respondents United States, et al. filed. (Distributed)
Sep 20 2005	Record recevied from U.S.C.A. for 9th Circuit and U.S.D.C. for Western District of Washington. (1 envelope)
Oct 13 2005	Reply of petitioner James Lockhart filed. (Distributed)
Nov 2 2005	Argued. For petitioner: Brian Wolfman, Washington, D.C. For respondents: Lisa S. Blatt, Assistant to the Solicitor General, Department of Justice, Washington, D.C.

(1)

Supreme Court, U.S.
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No. 04-____

IN THE
Supreme Court of the United States

JAMES LOCKHART,
Petitioner,

v.

UNITED STATES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the Social Security Act and the Debt Collection Improvement Act bar the United States from withholding social security benefits to collect student loan debt that has been outstanding for more than ten years, as the Eighth Circuit has held, or does the Higher Education Act eliminate any such bar, as the Ninth Circuit held below?

LIST OF PARTIES

Petitioner:
James Lockhart

Respondents:
United States of America
Secretary of Education of the United States
Secretary of the Treasury of the United States
Attorney General of the United States

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PETITION FOR A WRIT OF CERTIORARI

In the decision below, the Ninth Circuit held that the federal government may seize a social security recipient's benefits to collect student loan debt that has been outstanding for more than ten years. The Eighth Circuit has reached exactly the opposite conclusion. *See Lee v. Paige*, 376 F.3d 1179 (8th Cir. 2004). James Lockhart, a disabled man who relies on his monthly social security check to pay for his food and prescription medication, respectfully petitions this Court to review the Ninth Circuit's decision and resolve this circuit split.

This Court should grant certiorari because, as the government recently asserted in its now denied petition for rehearing in the Eighth Circuit, the question presented is "of [e]xceptional [i]mportance." Pet. App. 20a. The decision below implicates two of the largest federal programs—social security and federal student aid—in a manner that affects the ability of some of the most impoverished Americans to meet their daily needs. Left unresolved, the circuit split "creates a situation in which the legality of social security offsets in the present context will depend on where the debtor lives, which is clearly an unacceptable state of affairs." Pet. App. 21a.

OPINIONS BELOW

The opinion of the court of appeals is reported at 376 F.3d 1027 and is reproduced in the appendix at 1a. The court of appeals' unreported order denying petitioner's petition for rehearing is reproduced in the appendix at 9a. The district court's unreported order dismissing the complaint is reproduced in the appendix at 8a.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A timely petition for rehearing was denied on November 4, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The anti-alienation provision of the Social Security Act of 1935, 42 U.S.C. § 407, provides:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

In 1991, the Higher Education Assistance Act of 1965, 20 U.S.C. § 1091a(a), was amended, in relevant part, to read as follows:

> (2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by--
>
> . . . .
>
> (D) the Secretary [of Education], the Attorney General, the administrative head of another Federal agency . . . for the repayment of [a student loan] . . . that has been assigned to the Secretary . . . .

In 1996, Congress enacted the Debt Collection Improvement Act (DCIA), as an amendment to the Debt Collection Act of 1982. The DCIA made social security benefits subject to offset, but also retained a ten-year limitations period on the government's offset authority. The statute, codified at 31 U.S.C. §§ 3716, provides in relevant part as follows:

> (c)(3)(A)(i) Notwithstanding any other provision of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)) . . . except as provided in clause (ii), all payments due to an individual under . . . the Social Security Act . . . shall be subject to offset under this section.
>
> (ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection.
>
> . . . .
>
> (e) This section does not apply--
>
> (1) to a claim under this subchapter that has been outstanding for more than 10 years; or
>
> (2) when a statute explicitly prohibits using administrative offset to collect the claim or type of claim involved.

STATEMENT

A. Statutory Framework

The question in this case is whether the government may seize social security benefits to collect student loan debt that has been outstanding for more than ten years. Answering that question requires the synthesis of four provisions enacted

at four different points in time and contained in three distinct statutory schemes: the Social Security Act, the Higher Education Act, and the Debt Collection Act (as amended by the Debt Collection Improvement Act). The chronology of these enactments is crucial to understanding how the Ninth Circuit erred below.

1. The Social Security Act of 1935

The Social Security Act of 1935, as amended, establishes a social insurance program for wage earners and their dependents, 42 U.S.C. § 401, *et seq.*, and a welfare program for people who are blind, aged, or disabled. 42 U.S.C. § 1381, *et seq*. These programs are designed principally "to provide a minimum level of security against the economic uncertainties of old age." H.R. Rep. No. 615, 74th Cong., 1st Sess. (1935).

The benefits paid by these programs are protected by a very strict anti-alienation provision. The provision states that "none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a). As this Court has recognized, "[t]he language is all-inclusive." *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415 (1973). "[I]t imposes a broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417.

In 1983, Congress strengthened the already broad protection afforded by the anti-alienation provision in response to bankruptcy court decisions permitting the attachment of social security benefits by bankruptcy trustees based on the supposed repeal by implication of section 407 by the Bankruptcy Reform Act. *See* Pub. L. No. 98-21, § 335(a) (1983), *reprinted in* 1983 U.S.C.C.A.N. 443. Congress added to the anti-alienation provision an unusual requirement that

"[n]o other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. § 407(b).

2. The Debt Collection Act of 1982

Several statutes authorize federal agencies, including the Secretary of Education, to employ a number of means to collect debts owed to the United States. In addition to filing suit to obtain or collect a judgment, the Secretary of Education may collect student loan debts through extra-judicial means. For example, even if the government has not obtained a judgment, federal law allows agencies to collect a debt by directing the Department of the Treasury to intercept tax refunds, 31 U.S.C. § 3720A, or, where a debt is owed by a federal employee, by deducting part of the employee's salary, 5 U.S.C. § 5514. The Department of Education has also been given special authority to garnish the wages of private employees by issuing administrative garnishment orders. 20 U.S.C. § 1095a.

This case concerns a particular debt collection tool available to federal agencies. The Debt Collection Act of 1982 (DCA) authorized the federal government to collect debts by means of "administrative offset," 31 U.S.C. § 3716(a), which the Act defines as the "withholding of money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes to the government." 31 U.S.C. § 3701(a)(1); 31 C.F.R. § 285.4(c) (describing offset program); 63 Fed. Reg. 44,986-01 (Aug. 21, 1998) (same). The Treasury Department operates a centralized program, known as the Treasury Offset Program, that is used by federal agencies and states to collect debt by offsetting various payments, including tax refunds and federal salaries. Under this program, creditor agencies—such as the Department of Education—that

have been unable to collect claims against a debtor, certify nontax debts that are over 180 days delinquent to be collected by administrative offset. The officials disbursing payments on behalf of federal agencies then withhold funds to pay the claim.

The DCA, however, specifically exempted two categories of claims from administrative offset. The government's offset authority does not apply "to a claim under this subchapter that has been outstanding for more than 10 years" or "when a statute explicitly prohibits using administrative offset to collect the claim or type of claim involved." 31 U.S.C. § 3716(e) (originally codified at 31 U.S.C. § 3716(c)).

By virtue of the Social Security Act's anti-attachment provision, the government's administrative offset authority did not initially extend to social security benefits. As explained below, social security benefits did not become subject to offset until 1996, when the DCA was amended.

3. 1991 Amendment to the Higher Education Act of 1965

In 1991, Congress sought to ensure that obligations to repay federal student loans and grant overpayments generally would be enforceable without regard to state or federal limitations periods. It therefore amended the Higher Education Act of 1965 (HEA) to provide: "Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by" the Secretary of Education or another government agency "for the repayment of [a student loan] . . . that has been assigned to the Secretary." Higher Education Technical Amendments of 1991, Pub. L. No. 102-26, § 3, 105 Stat. 123, 124 (1991) (codified at 20 U.S.C. § 1091a(a)(2)).

The legislative history indicates that Congress was concerned primarily with the government's collection of student loan debt through the offset of *tax refunds*, as authorized by 31 U.S.C. § 3720A. The amendment was a direct response to *Grider v. Cavazos*, 911 F.2d 1158, 1164-65 (5th Cir. 1990) (holding that "an assigned student loan debt which is time barred for collection by lawsuit cannot be collected by tax refund offset" if the debt is over ten years old). *See* 137 Cong. Rec. H1808, H1810 (1991) (statement of Rep. Ford) (noting that the amendment "overcomes a recent circuit court decision that puts in jeopardy the ability of the Department of Education to collect defaulted student loans through offsets of income tax refunds and other means."); *id.* at H1812 (statement of Rep. Barrett) ("I'm proud to see that we are restoring the highly successful tax offset mechanism to collect on defaulted student loans.").

The 1991 HEA amendment neither mentioned social security benefits nor made express reference to the Social Security Act's anti-alienation provision. This is not surprising, because, at the time the amendment was enacted, the government did not have the authority to offset social security benefits under any circumstances.

4. The Debt Collection Improvement Act of 1996

In 1996, however, Congress enacted the Debt Collection Improvement Act (DCIA), which amended the Debt Collection Act by expanding the debt collection tools available to the government. Pub. L. No. 104-134, Title III, § 31001(a)(2), 110 Stat. 1321-358 (1996) (codified at 31 U.S.C. § 3716). The DCIA authorized the withholding of social security payments through administrative offset for the first time, making the required "express reference" to the social security anti-alienation provision. 31 U.S.C. § 3716(c).

However, Section 3716 also imposes a number of important safeguards and limitations. For example, the first $9,000 of social security or other payments are exempt from offset. *Id.* § 3716(c)(A)(ii). Furthermore, administrative offsets may only be imposed after the debtor has been given notice of the agency's claim and the opportunity to contest the debt in administrative review, or an opportunity to negotiate an agreement for repayment. *Id.* § 3716(a).

Perhaps most importantly—and crucially for this case—the DCIA retained the DCA's ten-year statute of limitations, which had previously been codified at 31 U.S.C. § 3716(c). The provision prohibits administrative offset of any claim "that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

The DCIA's legislative history shows that Congress was particularly concerned about the impact that administrative offset might have on social security beneficiaries and intended the government to strictly observe safeguards and limitations on its offset authority. "Such safeguards are critical," the Conference Report emphasized, "when benefits such as Social Security are the sole or major source of income for the debtor." H.R. Conf. Rep. No. 104-537, 104th Cong., 2d Sess., 142 Cong. Rec. H3842, H4042-43 (Apr. 25, 1996); *see also* 67 Fed. Reg. 78,940 (Dec. 26, 2002) (stating that "[l]imitations on [the offset of] types of Federal payments, such as Federal salary and social security payments apply.").

B. Factual Background

At the time he brought this lawsuit, petitioner James Lockhart survived on a fixed income consisting of $874.00 in monthly Social Security Disability (SSD) benefits and $10.00

in monthly food stamps. SER 17 at 23-24.[1] Following his sixty-fifth birthday in July 2003, Mr. Lockhart's period of disability ended and he began receiving old-age benefits. *See* 20 C.F.R. § 404.321(c)(1).

In addition to ordinary living expenses, Mr. Lockhart must also use his monthly benefits to pay for significant medical expenses. He underwent double bypass heart surgery in 1999 and requires six prescription medications for his lingering cardiovascular problems. SER 3 at 28. He also suffers from Type II diabetes, which requires him to purchase additional medical supplies. *Id.* Not surprisingly, he struggles to meet these expenses with his limited social security benefits. *Id.* 2 at 12.

Mr. Lockhart became unemployed in 1981, and his only subsequent employment lasted for a few months in 1987. *Id.* 2 at 6. He attended several institutions of higher education between 1984 and 1990, borrowing a series of federally-guaranteed educational loans. *Id.* 2 at 7. He was unable to repay the majority of these loans, and the earliest debt was assigned to the Department of Education in October 1991. *Id.* 1 at 44.

On February 6, 2002, a private collection agency notified Mr. Lockhart that his social security benefits would be withheld to offset his student loan debt. *Id.* 2 at 9. Mr. Lockhart contacted the Department of Education the following day to request an administrative review of the decision to offset his payments. *Id.* On April 4, 2002, he received official notification from the Department of the Treasury that his benefits would be offset up to 15% each month to pay the

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[1]Citations to "SER" refer to the Supplemental Excerpts of Record filed by Mr. Lockhart in the court of appeals. For each reference, the first number is the document number and the second number is the page number.

delinquent student loan debts. *Id.* 18 at 31. The government began offsetting his benefits in May 1, 2002 and is continuing to do so.

C. Proceedings Below

1. District Court

Mr. Lockhart filed this action *pro se* in the United States District Court for the District of Washington on March 20, 2002, seeking an injunction prohibiting the government from offsetting his social security benefits. The district court had jurisdiction under 28 U.S.C. § 1331. *See* Pet. App. 3a. Although Mr. Lockhart's complaint contained a number of different claims, the second claim presented the issue that is the focus of this petition. It alleged that the United States' "attempt to garnish [his] SSD payments by administrative offset is time barred under 31 U.S.C. Sec. 3716(e)(1), as amended, because more than 10 years have passed since [his] education loans became outstanding." *Id.* 2 at 14. Mr. Lockhart also filed a memorandum on the same day as the complaint, which quoted the DCIA's ten-year statute of limitations provision on its first page, SER 3 at 17, and stated that "The Department of Education (ED) commenced its offset action . . . well over ten years after the time Lockhart's loans became outstanding." SER 3 at 18.

On May 16, 2002, the district court, acting *sua sponte*, ordered Mr. Lockhart to show cause why his complaint should not be dismissed for failure to state a claim and for lack of subject matter jurisdiction. Ten days after Mr. Lockhart responded to the order and attempted to clarify his allegations, the district court summarily dismissed the complaint. Pet. App. 8a. After the district court denied his motion for

reconsideration, he appealed to the Ninth Circuit.[2]

2. Court of Appeals

The Ninth Circuit affirmed. Pet. App. 1a-7a. The panel based its decision on a sweeping interpretation of the government's authority to offset social security benefits under the DCIA, 31 U.S.C. § 3716(c)(3)(A)(i)-(ii). Notwithstanding the DCIA's extensive safeguards restricting the government's use of its offset authority, the court opined that the Act "explicitly removes *any protection under section 407* that Social Security benefits may have had from offset, and thus allows the government to reach Lockhart's benefit[s] in order to collect on his debt." *Id.* at 6a (emphasis added). The court recognized, however, that the 1996 Act had left in place the express ten-year statute of limitations on the government's authority to offset payments. Thus, the court observed, "[a] puzzle has been created by the codifiers." *Id.*

The Ninth Circuit's solution to this statutory interpretation "puzzle" relied on a theory of implicit repeal. "[I]t seems clear," the court explained, "that in 1996, Congress explicitly authorized the offset of Social Security benefits, and that in the Higher Education Act of 1991 [sic], Congress had overridden the 10-year statute of limitations as applied to student loans. That the codifiers failed to note the impact of the 1991 repeal on section 3716(e) does not abrogate the repeal." *Id.* 6a-7a. Accordingly, the court concluded, the Debt Collection Act's ten-year statute of limitations was inapplicable. *Id.* 7a. The Ninth Circuit did not explain how its conclusion could be reconciled with the social security anti-alienation provision's prohibition on implicit repeals of the

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[2]Mr. Lockhart filed his appeal *pro se* and completed a full round of briefing without the benefit of counsel. A second round of briefing was completed after the University of Arizona College of Law's Pro Bono Appellate Project agreed to represent Mr. Lockhart in the court of appeals.

broad protection afforded to social security benefits. *See* 42 U.S.C. 407(b).

Less than two weeks later, the Eighth Circuit reached a contrary result. *See Lee v. Paige*, 376 F.3d 1179 (8th Cir. 2004). Mr. Lockhart filed a petition for rehearing the next day, and the Ninth Circuit denied his petition on November 4, 2004.

REASONS FOR GRANTING THE PETITION

I. The Eighth and Ninth Circuits Are in Direct Conflict Over the Authority of the United States to Withhold Social Security Benefits As a Means of Collecting Old Student Loan Debt.

This case presents a classic intercircuit conflict. The Ninth Circuit's decision in this case, which holds that the government may withhold social security benefits to collect old student loan debt, is directly at odds with the Eighth Circuit's decision in *Lee v. Paige*, 376 F.3d 1179 (8th Cir. 2004). In its petition for rehearing en banc in *Lee*, the government asserted that the two decisions create an "intercircuit conflict" concerning a federal program "of substantial importance." Pet. App. 14a.

A. *Guillermety* (E.D. Mich). The first reported case concerning whether the government may offset social security benefits to collect educational debts outstanding more than ten years was *Guillermety v. Secretary of Education*, 241 F.Supp.2d 727 (E.D. Mich. 2002). There, three elderly social security recipients who relied on monthly benefits to meet their basic needs sued to stop the government from offsetting their benefits to collect old student loans. The court recognized that the case required it to "reconcile an apparent conflict between three statutes." *Id.* at 740. The government argued that express reference to the social security anti-alienation provision, 42

U.S.C. § 407, was not necessary because the 1991 Higher Education Act (HEA) amendment did not limit or modify the anti-alienation provision, but instead merely overrode the ten-year limitations period in the Debt Collection Act (DCA), thereby extending the government's authority to offset social security benefits to collect student loans outstanding for more than ten years. *Id.* at 751. The court disagreed for three key reasons.

First, the court explained, the entire purpose of the 1983 amendment to the anti-alienation provision was to reject the doctrine of repeal by implication. "Requiring 'express reference' to section 407 ensured that Social Security benefits could not be unintentionally limited or modified by past or future legislation." *Id.* at 752. Because section 1091a of the HEA did not refer to section 407, the court explained, "[t]he Government's interpretation" is "precisely the type of unintentional expansion of an express modification which Congress attempted to eliminate when enacting" section 407(b). *Id.*

Second, the court rejected the government's position because the government attributed to Congress a result that Congress could not possibly have anticipated. "[W]hen Congress amended section 1091a in 1991, the government was precluded from administratively offsetting Social Security benefits to collect claims of the United States in all circumstances. Clearly, then, when Congress eliminated all statutes of limitation with respect to student loan collections in 1991, it could not have contemplated or intended that this sweeping legislation would permit the government to offset Social Security benefits in the future." *Id.* at 753.

Third, the court concluded that, based on both the legislative history surrounding the DCIA and the fact that the DCIA left the DCA's ten-year limitations period intact, Congress intended to preserve existing limitations on the

government's offset authority when it extended the offset program to encompass social security in 1996. *Id.* at 757 ("The unbridled ability to offset social security benefits was not intended by Congress.").

The United States appealed the decision in *Guillermety* to the Sixth Circuit, but voluntarily dismissed the appeal after the case became moot. *See Guillermety v. Secretary of Education*, 03-1604 (6th Cir. Sept. 24, 2004) (unpublished order).

B. *Lee* (W.D. Mo. and 8th Cir.). The second reported case raising the question presented was brought by Dee Ella Lee, a 68-year-old woman whose social security benefits were being offset to collect on two defaulted student loans–neither one for more than $2,000–taken out in 1978 to finance her studies at a community college. *Lee v. Paige*, 276 F.Supp.2d 980, 981 (W.D. Mo. 2003). Noting that the Department of Education's arguments were "identical to those made" in *Guillermety*, the district court "adopt[ed] the reasoning of the *Guillermety* court and highlight[ed] a few key points." *Id.* at 983. "[T]he major flaw in Education's arguments," the court observed, "stems from the chronology of the enactment of the statutes involved." 276 F.Supp.2d at 983. "When Congress removed all statute of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments because such payments were not yet subject to offset." *Id.* at 984 (citing *Guillermety*, 241 F.Supp.2d at 753).

The district court offered a concise synthesis of the interplay between the DCIA's statute of limitations and the HEA amendment eliminating statutes of limitations: "Congress declared in [the HEA] that there would be no limitations on when student loans could be collected. This statute controls the *time* for collecting past due amounts," whereas the DCIA's statute of limitations "controls the *sources* of funds to which

Education can look to satisfy its claim. Section 3716 does not limit Education's time in which to collect student loans, rather it limits Education's ability to look to Social Security benefits for repayment." *Id.* at 984 (emphasis added). One reason for this latter limitation, the court explained, is the special protection afforded to social security benefits, as evidenced by the Social Security Act's anti-alienation provision. *Id.* at 984 n.1.

The Eighth Circuit affirmed on the basis of the district court's "well-reasoned" opinion. *See Lee v. Paige*, 376 F.3d 1179 (8th Cir. 2004). The court was particularly persuaded by (a) the district court's observation that in 1991, when the HEA amendment was enacted, Congress could not have anticipated its actions to have any effect on social security benefits, (b) that, in the DCIA, "Congress expressly left the ten-year disabling provision intact," and (c) that, if it had intended to allow the HEA amendment to apply to social security, Congress could have said so explicitly. *Id.* at 1180.

Asserting that the Eighth Circuit's decision created an intercircuit conflict on an issue of exceptional importance, the government filed a petition for rehearing and rehearing en banc, Pet. App. 10a, which was denied on October 29, 2004. Judges Loken, Colloton, and Gruender dissented from the denial of rehearing en banc. *See Lee v. Paige*, 03-3819 (8th Cir. Oct. 29, 2004) (unpublished order).

C. *Lockhart* (9th Cir.). The Ninth Circuit's decision below reached the exact opposite conclusion from the other courts that have considered the question presented. The Ninth Circuit's solution to the "puzzle" presented by this case relied on a theory of implicit repeal that is directly at odds with both *Guillermety* and *Lee*, and with the plain text of the social security anti-alienation provision, 42 U.S.C. § 407(b). *Compare Lockhart*, Pet. App. 6a ("That the codifiers failed to note the impact of the 1991 repeal on section 3716(e) does not

abrogate the repeal."), *with Lee*, 376 F.3d at 1180 ("Had Congress intended to limit the disabling provision to allow the government unlimited offset opportunities for the collection of delinquent student loans . . . it would have done so explicitly. In the absence of Congressional language authorizing application of § 1091a to social security offsets . . . the specific limitations in § 3716(e) prevail.").[3]

II. Given the Importance of the Issue Presented, the Circuit Split is Intolerable.

As the United States recently recognized in its Eighth Circuit rehearing petition in *Lee*, the question presented is "of [e]xceptional [i]mportance"—not only for the government's debt collection activities, but also for many social security recipients, like Mr. Lockhart, who depend on their monthly benefits to meet their basic needs. Pet. App. 20a. If the decision below is allowed to stand, two otherwise identically situated social security recipients may receive different monthly allotments depending upon whether they live in Alaska or Arizona, on the one hand, or Missouri or Minnesota, on the

[3]We have been able to locate only two decisions on the question presented—both unreported—that are arguably consistent with the Ninth Circuit's approach in *Lockhart*. *See Chatmon v. U.S. Department of Education*, 2003 WL 21501919 (N.D. Tex. June 24, 2003) (rejecting, based on § 1091a(a)(2), plaintiff's claim that the government was time-barred by the statute of limitations from offsetting his social security benefits to collect on student loans that had been assigned to the Department of Education in 1992 and 1993); *Roth v. United States*, 2003 WL 21730094 (D. Minn. July 22, 2003) (rejecting, based on § 1091a(a)(2), plaintiff's claim that the government was time-barred under a theory of laches from offsetting her social security benefits to collect on student loans that had been assigned to the Department of Education in 1986). Neither case provides any meaningful analysis of the issue. And in light of *Lee*, *Roth* would be wrongly decided under current Eighth Circuit precedent.

other.

The United States made precisely this point in its rehearing petition. The conflict between the decisions of the Eighth and Ninth Circuits, it noted, "creates a situation in which the legality of social security offsets in the present context will depend on where the debtor lives, which is clearly an unacceptable state of affairs." Pet. App. 21a. Indeed, a conflict that "creates unfairness to litigants in different circuits, as in allowing Federal benefits in one circuit that are denied in other circuits," is the classic example of a conflict that is truly "intolerable."[4]

The United States' rehearing petition focused on the potential burden on the government, explaining that "the taxpayers are owed billions of dollars in defaulted student loans" and that "Social Security offsets are one of the few effective means the government has to collect on that indebtedness, a large portion of which is or soon will be 10 years delinquent." Pet. App. 21a. Of all federal agencies, the Department of Education has the largest total receivables ($108.4 billion), comprising 35 percent of the federal government's total. Two types of debt account for virtually all of this total: Federal Direct Loans ($87.7 billion) and Defaulted Guaranteed Loans ($20.4 billion).[5] Student loan debt also comprises the lion's share of the various non-tax debts

[4]Judicial Conference of the United States, *Report of the Federal Courts Study Committee* 123 (1990); *see generally* Arthur Hellman, *By Precedent Unbound: The Nature and Extent of Unresolved Intercircuit Conflicts*, 56 U.Pitt. L. Rev. 693 (1995).

[5]U.S. Department of the Treasury, Financial Management Service, *Fiscal Year 2003 Report to the Congress: U.S. Government Receivables and Debt Collection Activities of Federal Agencies* 3 (2004) (hereinafter "FY 2003 Treasury Report to Congress").

collected through the Treasury Offset Program. Of the $31.6 billion in non-tax debts referred for offset by the end of fiscal year 2003, 54 percent ($17.9 billion) were referred by the Department of Education.[6] Over the past three years, the Department of Education has collected approximately $400 million in delinquent student loan debt per year through the offset program.[7]

On the other side, the conflict is important because of its immediate impact on social security recipients carrying student loan debt. Approximately one of every six Americans, and one of every four American households, receives social security benefits.[8] One third of those recipients depend on social security payments for all or virtually all of their income. *Id.* "Eighteen percent of the entire American public reports having outstanding student loan debt."[9] Many of these debts are covered by the DCIA's statute of limitations: According to the Treasury's latest figures, of the debts owed to the government that have been over 180 days delinquent, 19% have been delinquent for over ten years.[10]

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[6]U.S. Department of the Treasury, Financial Management Service, *Delinquent Debt Collection: Fiscal Year 2003*, *at* www.fms.treas.gov/news/factsheets/delinquent_debtcollection.html.

[7] FY2003 Treasury Report to Congress, *supra*, at 19.

[8]Social Security Administration, *Results at the Social Security Administration: Getting It Done* (2004), *at* http://www.ssa.gov/performance/results/results2004.pdf.

[9]*Student Loans a Major Drag on Consumer Spending*, 12 Consumer Bankruptcy News 4, Oct. 3, 2002.

[10]FY2003 Treasury Report to Congress, *supra* at 4.

Finally, this Court's review is warranted because the issue is a recurring one. Although it has been authorized to do so since 1996, the federal government did not actually begin to offset social security benefits until October 2001.[11] In the three years since then, district courts in Texas, Missouri, Michigan, Minnesota, and Washington have already confronted the question presented and two circuits have reached conflicting decisions. Deferring review at this time will lead only to further chaos and uncertainty—for the federal government, for social security recipients, and for courts across the country.

III. The Ninth Circuit's Decision Is Wrong.

This Court should grant certiorari because the decision below is wrong. The other courts to have considered the issue—none of which the Ninth Circuit cited—have presented several persuasive reasons to reject the Ninth Circuit's reasoning.

First, the Ninth Circuit's decision rests on an unexamined—and erroneous—assumption that the DCIA, which allowed the offset of social security benefits for the first time, "remove[d] *any protection* under section 407 that Social Security benefits may have had from offset." Pet. App. 6a (emphasis added). But, as the other courts that have considered this question have recognized, there is no reason to assume that Congress, by authorizing the offset of benefits, intended to eliminate any protection whatsoever afforded by section 407.

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[11]U.S. Department of the Treasury, Financial Management Service, *Fact Sheet: Benefit Payment Offset Program*, available at http://www.fms.treas.gov/news/factsheets/benefitoffset.html; *see also* General Accounting Office, *Major Management Challenges and Program Risks: Department of the Treasury*, GAO-03-109 at 32 (Jan. 2003).

See Guillermety, 241 F.Supp.2d at 750-57; *Lee*, 276 F.Supp.2d at 984, *aff'd*, 376 F.3d at 1179.

On the contrary, the social security anti-alienation provision imposes a broad bar on the attachment of social security payments that may be modified or limited only by "express reference" to the anti-alienation provision. 42 U.S.C. § 407(b). The DCIA *does* contain such an express reference, but it creates only a narrow exception to the anti-alienation provision that is explicitly confined to claims that have been outstanding for less than ten years and claims for which offset is not prohibited by another statute. 31 U.S.C. § 3716(e). In other words, only offsets that comply with the DCIA—when the statute is read as a coherent whole—are exempt from the social security anti-alienation provision.

Second, the Ninth Circuit incorrectly concluded that the 1991 amendment to the HEA allows the government to ignore the DCIA's ten-year statute of limitations when it offsets social security benefits to collect on student loans. The 1991 HEA amendment, however, does not meet the anti-alienation provision's demanding specificity requirement. Instead, it does the opposite: It *generally* provides that time limitations on collection actions do not apply to collection of debts arising from federal educational assistance. It contains no specific reference to section 407, and it does not mention the Social Security Act or payments under that Act. Thus, the HEA amendment is precisely the type of general provision that Congress determined would not supersede the anti-alienation statute when it mandated that an "express reference to this section" is required to modify that statute.

Third, even leaving aside the social security anti-alienation provision, the Ninth Circuit's decision does not properly synthesize the relevant provisions of the DCIA and the HEA. In effect, the decision below gives effect to one provision of the DCIA—the authorization to offset social

security benefits—while failing to give effect to another provision of the same statute that expressly limits the first provision—the ten-year limitations period on the government's offset authority. The DCIA, however, provides a comprehensive scheme for the collection of debts: It authorizes offset, but only subject to specific limitations and safeguards. The Ninth Circuit's decision does violence to this statutory scheme based on the 1991 HEA amendment, a general statutory provision that Congress could not possibly have intended to apply to the offset of social security benefits.

Fourth, the Ninth Circuit's decision is marred by errors concerning the chronology of the relevant enactments, as well as the significance of that chronology to the question presented. After reciting the language of the social security anti-alienation provision, the Ninth Circuit speculated that the administrative offset of social security benefits allowed by the DCIA may not be covered by the anti-alienation provision at all, a view that the government itself does not embrace. *See* Supp. Br. for Appellees at 11 (stating that the anti-alienation provision "protects Social Security benefits from offset absent an express reference to that law."). As the court of appeals put it, "this amendment did not mention offset by the government. Arguably, offset is included [in § 407(a)] under 'other legal process.' Offset, however, is a form of self-help that may not fall within the term. Congress, having so recently amended the Debt Collection Act to provide for administrative offset, may not have intended to deny this remedy to the government." Pet App. 4a. Although it determined that resolving this issue was unnecessary to decide the case, *id.* at 4a-5a, the court's speculation exposes a serious misunderstanding that infects the decision as a whole. The Ninth Circuit's analysis rested on at least two basic misunderstandings.

First of all, the original social security anti-alienation provision—which contains the term "other legal process"—was

not an "amendment," but an integral part of the original Social Security Act. The provision was enacted in 1935, *forty-seven years before* the Debt Collection Act of 1982. *See* Social Security Act, ch. 531, Title II, § 208, 49 Stat. 625 (1935). The 1983 amendment to the Social Security Act added only the requirement that the prohibition on the interference with social security benefits could not be modified without "express reference" to the anti-alienation provision. Thus, it makes no sense to interpret the meaning of the original anti-alienation provision in light of the later-enacted Debt Collection Act.

Moreover, even in 1983, when the anti-alienation provision was amended, the government lacked authority to offset social security payments—authority that did not exist until 1996—so, to use the Ninth Circuit's terminology, there would have been no "remedy" to "deny" the government. This error is especially significant, because it masks a crucial question, which is not even posed, let alone answered, in the Ninth Circuit's decision: How could the 1991 HEA amendment—which eliminated any limitations periods applicable to the collection of student loan debt—possibly have eliminated statutes of limitation applicable to the offset of social security benefits, given that the offset of such benefits was undisputedly prohibited at the time? The answer, Mr. Lockhart submits, is that it could not.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 2004

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[12]Counsel acknowledge the work of Deepak Gupta, a graduate of Georgetown University Law Center, who took a lead role in preparing this petition.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES LOCKHART, *Plaintiff-Appellant,* v. UNITED STATES OF AMERICA; JOHN ASHCROFT, Attorney General; RODERICK R. PAIGE, as Secretary of the United States Department of Education; PAUL O'NEILL, United States Department of the Treasury, *Defendants-Appellees.*	No. 02-35759 D.C. No. CV-02-00640-JCC OPINION

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, Chief Judge, Presiding

Argued and Submitted
November 3, 2003—Seattle, Washington

Filed July 23, 2004

Before: John T. Noonan, Kim McLane Wardlaw, and
Richard A. Paez, Circuit Judges.

Opinion by Judge Noonan

COUNSEL

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Phillip H. Lynch, Assistant United States Attorney, Tacoma, Washington, for the defendants-appellees.

OPINION

NOONAN, Circuit Judge:

James Lockhart appeals the dismissal of his complaint by the district court for lack of subject matter jurisdiction and for failure to state a claim for which relief can be granted. We construe Lockhart's pro se pleading liberally and hold that he has asserted a basis for jurisdiction and a cognizable claim for an injunction to stay the government's offset of his Social Security benefits. On the merits, however, we hold that Lockhart's benefits are not protected, and accordingly affirm the judgment entered against him.

PROCEEDINGS

On March 20, 2002, Lockhart filed a complaint against the United States, the Attorney General and the Secretaries of Education and the Treasury alleging that he had received notice from the United States Department of Education that it intended to offset a portion of his monthly Social Security benefits to secure repayment of his government educational loans. Lockhart asserted that, because "more than 10 year shave passed since [his] education loans became outstanding,"the attempt to collect them by offset was "time barred under 21 U.S.C. § 3716(e)(1)."

This claim was buried in a barrage of other contentions which the district court understandably found confusing and which Lockhart failed to clarify when ordered to show cause why his case should not be dismissed for failure to show abasis for jurisdiction and to state a claim for which relief could be granted. On June 4, 2002, the complaint was dismissed in its entirety, and judgment was entered for the defendants.

Lockhart appeals.

JURISDICTION and STANDARD OF REVIEW

We have jurisdiction over the final judgment of the district court pursuant to 28 U.S.C. § 1291. We review de novo both a dismissal for want of subject matter jurisdiction, *see Kehrv. Smith Barney, Harris Upham & Co.*, 736 F.2d 1283, 1287(9th Cir. 1984) and a dismissal for failure to state a claim. *See Transmission Agency of Northern Cal. v. Sierra Pac. Power Co.*, 295 F.3d 918, 927-28 (9th Cir. 2002).

ANALYSIS

[1] *Construction of Lockhart's Complaint.* In compliance with precedent, we bend over backwards to pluck a viable claim from Lockhart's wide-ranging complaint. *Haines v.Kerner*, 404 U.S. 519, 520 (1972); *Radcliff v. Landau*, 883F.2d 1481, 1482 (9th Cir. 1989) (per curiam). The contention that the government's offset is barred by statute is such a claim. By implication, the claim also alleges federal question jurisdiction.

The Statutes At Issue. Four statutes must be considered. The Debt Collection Act of 1982 provided for administrative offset as a way of collecting debts of the United States, at the same time stating:

> (e) This section does not apply —
> (1) to a claim under this subchapter that has been outstanding for more than 10 years; or
> (2) when a statute explicitly prohibits using administrative offset to collect the claim or type of claim involved.

Pub. L. No. 97-365, 96 Stat. 1754 (1982) (codified as amended in 31 U.S.C. § 3716(e)).

[2] Social Security benefits once appeared to fall squarely within the Act's exception. § 3716(e)(2). The Social SecurityAct, 42 U.S.C. § 407 was amended in 1983 to read:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

Id. Notably, this amendment did not mention offset by the government. Arguably, offset is included under "other legal process." Offset, however, is a form of self-help that may not fall within the term. Congress, having so recently amended the Debt Collection Act to provide for administrative offset, may not have intended to deny this remedy to the government. To

decide this case we need not resolve the question.

[3] In 1991, the Higher Education Assistance Act was amended to read as follows:

> (1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.
>
> (2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by —
>
> . . . .
>
> (D) the Secretary, the Attorney General, the administrative head of another Federal agency . . . for the repayment of [a student loan] . . . that has been assigned to the Secretary. . . .

20 U.S.C. §§ 1091a(a)(1)-(2). As of 1991, therefore, the statute of limitations contained in the Debt Collection Act no longer prevented the collection of student loans, and the only restriction the government arguably faced in collecting delinquent student loans was that it could not use administrative offset to reach social security benefits. *See* 42 U.S.C. § 407.

[4] However, in 1996, Congress amended the Debt Collection

Act by adding:

> (c)(3)(A)(i) Notwithstanding any other provision of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)) . . . all payments due to an individual under the Social Security Act . . . shall be subject to offset under this section.
>
> (ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection.

31 U.S.C. §§ 3716(c)(3)(A)(i)-(ii). This statute explicitly removes any protection under section 407 that Social Security benefits may have had from offset, and thus allows the government to reach Lockhart's benefit in order to collect on his debt.

This amendment was inserted in the Debt Collection Act without removing the language already quoted about the nonapplicability of "this section" to claims outstanding for more than 10 years or to statutes explicitly prohibiting administrative offset. *See* 31 U.S.C. §§ 3716(e)(1)-(2).

[5] A puzzle has been created by the codifiers. But it seems clear that in 1996, Congress explicitly authorized the offset of Social Security benefits, and that in the Higher Education Act of 1991, Congress had overridden the 10-year statute of limitations as applied to student loans. That the codifiers failed to note the impact of the 1991 repeal on section 3716(e) does not abrogate the repeal. Because the Debt Collection Act's statute of limitation is inapplicable here, the government's offset is not time-barred.

Accordingly, we affirm the judgment entered against Lockhart.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES LOCKHART,

Plaintiff

v.

UNITED STATES OF AMERICA, et al.,

Defendants

CASE NO: C02-640C
ORDER

On May 16, 2002, this Court ordered Plaintiff to show cause in writing by 9:00 a.m. on Friday, May 31, 2002, why this matter should not be dismissed for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted. The Court also stayed consideration of Plaintiff's pending motions. On May 24, 2002, the Court received Plaintiff's "Motion and Memorandum in Support of Show Cause Vacatur of Agency Orders." In that pleading, Plaintiff once again fails to explain his theory of liability under federal law, nor does he provide a valid basis for this Court's subject matter jurisdiction. In addition, the facts outlined in the motion regarding the garnishment of Plaintiff's disability benefits do not seem likely to support liability under any legal theory. For these reasons, this action is DISMISSED in its entirety. The clerk is directed to enter judgment for Defendants.

SO ORDERED this 4th day of June, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATE COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
Nov 04 2004

JAMES LOCKHART

Plaintiff-Appellant,

v.

UNITED STATES
OF AMERICA, et al.,

Defendants-Appellees.

No. 02-35759

D.C. No.
CV-02-00640-JCC

ORDER

Before NOONAN, WARDLAW, and PAEZ, Circuit Judges.

The petition for rehearing is DENIED.

No. 03-3819

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DEE ELLA LEE
Plaintiff-Appellee,

v.

RODERICK PAIGE, Secretary of the
United States Department of Education,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF MISSOURI

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 03-3819

DEE ELLA LEE,
Plaintiff-Appellee,
v.
RODERICK PAIGE, Secretary of the
United States Department of Education,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FROM THE WESTERN DISTRICT OF MISSOURI

PETITION FOR REHEARING AND REHEARING EN BANC

The issue in this case is whether the government may offset Plaintiff Dee Ella Lee's social security benefits to recover on two defaulted student loans. The panel, going into conflict with a recent Ninth Circuit decision, see Lockhart v. United States, 376 F. 3d 1027 (9th Cir. 2004), held that the government may not use its social security offset authority with respect to student loans that have been collectable by the United States for more than 10 years. As we explain below, rehearing en banc is appropriate because of the intercircuit conflict with Lockhart, see Fed. R. App. Pro. 35 (b) (2) (B), because the Lockhart decision is correct, and because the loan recovery program at issue is of substantial importance.

Rehearing would be appropriate because the Lockhart decision was issued just days before the panel issued its ruling in this case. The panel's decision does not discuss Lockhart, and rehearing would allow the panel the opportunity to review the Ninth Circuit's reasoning and to be persuaded that Lockhart

was correctly decided.

1. Facts and Procedural History

In 1978, Ms. Lee took out two Perkins student loans, one for $1400 and the other for $2000. See Lee v. Paige, 276 F. Supp.2d 980, 981 (W.D. Miss. 2003). Ms. Lee defaulted on both loans in 1984. The $1400 loan was assigned to the Department of Education on December 29, 1987, and the $2000 loan was assigned to the Department on September 27, 1989. See ibid.

In October, 2001, after numerous attempts to collect Ms. Lee's defaulted student loans failed, the government began withholding $33 per month from her social security payment. Because of an increase in the amount of her social security payment, the offset increased to $53 per month on February 1, 2002. See Lee, 276 F.Supp.2d at 981.

Ms. Lee filed her complaint in 2001, seeking to prevent the government from making the offsets. See Complaint, pp. 1-2 (JA 7-8). The parties filed cross motions for summary judgment, and the district court granted Ms. Lee's motion. See 276 F. Supp.2d at 985. The court held that 31 U.S.C. 3716(e), a provision of the Debt Collection Act ("DCA"), bars the government from offsetting Ms. Lee's social security benefits because her student loans have been collectable by the United States for more than 10 years.

The government argued that 20 U.S.C. 1091a, a provision of the Higher Education Act ("HEA") that was enacted in 1991, abrogated that statute of limitations as it applies here. Section 1091a makes all statutes of limitations inapplicable to the government's student loan collection efforts. The district court rejected that view, however, because Congress did not expressly state its intention to abrogate the DCA's 10-year statute of limitations in 1996, when it authorized the social security offset at issue. The government appealed to this Court, but the panel affirmed for the reasons

stated in the district court's opinion. See Lee v. Paige, 376 F.3d 1179 (8th Cir. 2004).

2. Argument

As the Ninth Circuit correctly held in Lockhart, the Higher Education Act expressly preempts all statutes of limitations that would otherwise bar the government from collecting on a defaulted student loan, including the statute of limitation at issue here. The panel erred in holding otherwise, and rehearing or rehearing en banc is appropriate to correct this error and to prevent an intercircuit conflict with Lockhart.

a. The Higher Education Act Preempts the 10-year Statute of Limitations in the Debt Collection Act.

1. In 1991, Congress amended the Higher Education Act by providing that "[n]otwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment or other action initiated or taken. . .for the repayment of the amount due from a borrower on a loan made under this subchapter. . .that has been assigned to the Secretary [of Education]. . ." 20 U.S.C. 1091a.

As the above text shows, 20 U.S.C. 1091a constitutes a waiver of "any" statute of limitation that would impair the government's student loan collection efforts, by offset or otherwise, regardless of when the limitation statute is or was enacted. Thus, by it its plain terms, this provision waives the 10-year statute of limitations that the panel held forbids the government from offsetting Ms. Lee's social security benefits,

which is found at 31 U.S.C. 3716 (e).[1]

The panel held that the HEA does not waive the DCA's 10-year statute of limitations because Congress, when it amended the DCA to authorize offset of a debtor's social security benefits to collect on a defaulted student loan, did not expressly mention an intent to abrogate the DCA's 10-year limitations statute in that respect. See Lee v. Paige, 376 F.3d 1179, 1180 (8th Cir. 2004).

As we have explained, however, the DCA's 10-year statute of limitations was rendered inapplicable to government student loan collections five years earlier, when Congress enacted 20 U.S.C. 1091a (the HEA provision described above). As the Ninth Circuit correctly held in Lockhart, "[t]hat the codifiers failed to note the impact of the 1991 repeal on section 3716(e) does not abrogate the repeal." Lockhart, 376 F.3d at 1029. As the Ninth Circuit held in Lockhart, that should be the end of the matter.

2. The panel held that when "'Congress removed all - statutes of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments, because such payments were not yet subject to offset;" See Lee, 376 F.3d at 1180 (citation omitted). Section 1091a's plain text, however, reflects Congress's intent

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[1]31 U.S.C. 3716(e) provides that the government offset authority provided under the Debt Collection Act ("DCA") "does not apply. . . to a claim under this subchapter that has been outstanding for more than 10 years. . . ." 31 U.S.C. 3716 (e). Congress made no change to the limitations provision in section 3716(e) when it amended the DCA in 1996 to authorize offset of a debtor's social security benefits in order to recover on delinquent debts owed to the government. See 31 U.S.C. 3716 (c) (3) (A) (i). Thus were it not for the HEA, the 10-year limitations period stated in 31 U.S.C. 3716(e) would govern this case.

that "all" statutes of limitations must give way to section 1091a's preemptive ban. That expression of Congress's intent is controlling here, since Congress did not expressly state any intent to abrogate section 1091 when it enacted the offset authority at issue.

The panel suggested that Congress explicitly overrode section 1091a when it amended the Debt Collection Act in 1996, by "expressly [leaving] the [DCA's] 10-year disabling provision intact." 376 F.3d at 1180. As the Ninth Circuit held in Lockhart, however, all Congress did in 1996 was amend the DCA to authorize the offset at issue, without making any reference to section 1091a, or to the DCA's 10-year statute of limitations. See 376 F.3d at 1030.

Congress's action in 1996, therefore, was in effect nothing more than inaction on the issue at hand. "Congressional inaction cannot amend a duly enacted statute." Patterson v. McLean Credit Union, 491 U.S. 164, 175 n.1 (1989) (citations omitted). Accord Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A. 511 U.S. 164, 187 (1994) (noting that "Congressional inaction lacks persuasive significance, for purposes of statutory interpretation, because several equally tenable inferences may be drawn from such inaction, including the inference that. . . existing legislation already incorporated the offered change").

The panel also stated that Congress "did not import § 1091a into the social security context" in 1996, when it authorized the offset at issue, 376 F.3d at 1180. Congress did not need to "import" section 1091a into the social security context in 1996, however, because, as we have explained, it applies to "all" statutes of limitations, whenever enacted.

The panel held that "[h]ad Congress intended to limit the disabling provision to allow the government unlimited offset opportunities for the collection of delinquent student loans, . . . it would have done so explicitly." 376 F.3d at 1180. Again, however, the panel has it backwards. When, in 1991, Congress enacted section 1091a, it explicitly decided to free the

government's student loan collection efforts from any and all statutes of limitations, whenever enacted. It did not need to expressly repeat that intention in 1996, when it provided the offset authority at issue. Congress is presumed to act with knowledge of existing law when it enacts new statutes, see, e.g., Estate of Wood v. Comm'r of Internal Revenue, 909 F.2d 1155, 1160 (8th Cir. 1990), and implied repeals of preexisting statutes are found only when there is a clear statement of congressional intent. See, e.g., Indep. Commun. Banker's ass. of South Dakota, Inc. v. Bd. Of Governors of Federal Reserve, 838 F.2d 969, 974 (8th Cir. 1988). As we have said, there is no such statement of congressional intent here.

The panel also reasoned that "[i]n the absence of Congressional language authorizing application of § 1091a to social security offsets. . . the specific limitations in § 3716(e) prevail." 376 F.3d at 1180 (emphasis added). This statement, by referring to the "specific" limitations in section 3716(e), appears to invoke the canon of statutory construction that a specific statute will control over a more general one.

This canon is not helpful here, however, because the DCA's 10-year statute of limitations (31 U.S.C. 3716 (e)) is not more specific the HEA's waiver of all statutes of limitations (20 U.S.C. 1091a) with respect to student loan collections. Indeed, if anything, 20 U.S.C. 1091a arguably is the more specific statute, since it deals with the discrete topic of student loan collections, whereas section 3716(e) deals with debt collection in general.

Finally, the district court incorrectly suggested that enjoining the offsets at issue is necessary to achieve the purposes of the social security laws, which are "'designed to provide recipients with funds to meet their most basic needs, e.g., food, shelter, medicine.'" 276 F.Supp.2d at 984 n.1

(citation omitted).[2] The Debt Collection Improvement Act provides that any offset of social security benefits may not reduce the amount of those payments below $9000 per twelve-month period. See 31 U.S.C. 3716 (c) (3) (A) (ii).

By making that determination, Congress prescribed the minimum level of social security support that is necessary to meet the basic needs of social security recipients. The courts lack authority to question that judgment.[3]

b. The Issue Presented is of Exceptional Importance.

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[2]The district court was referring to what is known as the anti-alienation provisions of the Social Security Act. Those provisions, which are codified at 42 U.S.C. 407, state that social security benefits are not subject to any legal process, except where a law expressly refers to those provisions. As our briefs below explain, see Brief for Appellant, at 7; Reply Brief at 2, Congress specifically, referred to 42 U.S.C. 407 when, in 1996, it authorized the government to offset a debtor's social security benefits to recover a defaulted student loan. See 31 U.S.C. 3716(c) (3) (A) (i) ("notwithstanding any other provision of law (including. . . 42 U.S.C. 407), all payments due to an individual under. . . the Social Security Act. . . shall be subject to offset under this section") (emphasis added).

[3]Treasury regulations further limit the amount of a social security payment that can be offset. See 31 C.F.R. 285.4. Pursuant to those regulations, offset is limited to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15% of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. Ibid. 285.4(e).

As our opening brief points out, the taxpayers are owed billions of dollars in defaulted student loans. See Brief for Appellant at 6 n.2. Social security offsets are one of the few effective means the government has to collect on that indebtedness, a large portion of which is or soon will be 10 years delinquent. Thus, the panel's decision will seriously impair the government's student loan collection efforts. Because of the conflict with the Ninth Circuit's ruling in Lockhart, see above, the panel's decision also creates a situation in which the legality of social security offsets in the present context will depend on where the debtor lives, which is clearly an unacceptable state of affairs.

For all the above reasons, and to prevent an intercircuit conflict with the Ninth Circuit in Lockhart, the government respectfully requests the Court to grant rehearing or rehearing en banc.

Respectfully submitted,

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No. 04-881

In the Supreme Court of the United States

JAMES LOCKHART, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the Department of Education can collect defaulted student loans by offsetting a portion of a debtor's Social Security benefits without regard to the ten-year limitation period under the Debt Collection Act, 31 U.S.C. 3716(e)(1), given that Congress has expressly abrogated all otherwise applicable statutes of limitations for the collection of student loans.

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 376 F.3d 1027. The order of the district court (Pet. App. 8a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A petition for rehearing was denied on November 4, 2004 (Pet. App. 9a). A petition for a writ of certiorari was filed on December 29, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Title IV, Part B of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1070 *et seq.*, establishes a set of programs commonly known as the Guaranteed Student

Loan (GSL) program.[1] The GSL program encourages lenders to make funds available to students who might not otherwise be able to obtain or afford commercial loans to finance the costs of post-secondary education. Under the GSL program, banks that loan money to students receive a guarantee from state or other non-profit organizations that loans will be repaid if borrowers default. 20 U.S.C. 1078(b)(1)(A) and (G). That guarantee is reinsured by the Department of Education under an insurance agreement. 20 U.S.C. 1078(b)(1) and (c).

If a student loan borrower defaults on a loan, the guaranty agency reimburses the lender and takes an assignment of the loan. 20 U.S.C. 1078(b)(1); 34 C.F.R. 682.406. The guaranty agency thereafter may request (usually within 45 days of paying the lender) that the Department of Education reimburse the guaranty agency under the insurance agreement. 20 U.S.C. 1078(c)(1)(A); 34 C.F.R. 682.404(a)(1). The guaranty agency then must exercise "due diligence" to collect the debt. 20 U.S.C. 1078(c)(2)(A); 34 C.F.R. 682.410(b)(6) (setting forth collection effort requirements). If the guaranty agency is unable to collect the debt, the loan is assigned to the Department of Education. 34 C.F.R. 682.409(a) and (c)(1).

b. Various statutes provide for the effective and efficient collection of delinquent student loan debts. See, *e.g.*, 31 U.S.C. 3720A (tax refund offset); 5 U.S.C. 5514 (salary deduction for federal employees); 20 U.S.C.

[1] In 1992, Congress renamed the GSL program the Federal Family Education Loan Program. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 411(a)(1), 106 Stat. 510. Because the loans at issue in this case were issued before 1992, we refer to the program as the GSL program.

1095a, 31 U.S.C. 3720D (salary garnishment for any employee); see also 11 U.S.C. 523(a)(8) (limiting student loan discharge in bankruptcy). One such statute is the Debt Collection Act, 31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Improvement Act, which establishes, *inter alia*, an administrative offset program. Under the administrative offset program, the Department of the Treasury withholds funds (such as income tax refunds) payable by the United States to an individual to satisfy a claim against that individual by a federal agency. 31 U.S.C. 3716(c), 3720A. The Debt Collection Act contains a limitation period, however, which provides that administrative offset is generally not available to collect "a claim * * * that has been outstanding for more than 10 years." 31 U.S.C. 3716(e)(1).

In 1991, Congress amended the HEA to abrogate all statutes of limitations that would otherwise be applicable to efforts to collect student loans. Congress achieved that result in 20 U.S.C. 1091a(a), which provides:

> Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

20 U.S.C. 1091a(a)(2)(D). Congress further expressed that "[i]t is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the

period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Accordingly, the Secretary of Education has determined that it is no longer subject to the Debt Collection Act's ten-year limitation period in seeking repayment of delinquent student loans by administrative offset. See 20 U.S.C. 1091a(a)(2)(D) ("no limitation shall terminate the period within which * * * an offset" can be taken by the Secretary "for the repayment" of student loans). The Department of the Treasury has concurred in that view. 67 Fed. Reg. 78,936 (2002) (observing that debts for "education loans" "may be collected by offset legally if more than ten years delinquent").

c. Section 207 of the Social Security Act, entitled Assignment of Benefits, exempts Social Security benefits from any "execution, levy, attachment, garnishment, or other legal processes" unless another statute "express[ly]" makes reference to Section 207. 42 U.S.C. 407(a) and (b). Before 1996, the Debt Collection Act did not expressly refer to Section 207 in authorizing administrative offset.

In 1996, Congress amended the Debt Collection Act explicitly to make Social Security benefits subject to administrative offset under the Debt Collection Act. See 31 U.S.C. 3716(c)(3)(A)(i) ("Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act) * * * all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section."). The Debt Collection Act further provides that the first $9000 of each debtor's annual Social Security benefits shall be exempt from administrative offset. 31 U.S.C. 3716(c)(3)(A)(ii). Implementing regulations of the Department of Treasury further limit the amount of

offset of benefits to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15 % of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. 31 C.F.R. 285.4(e). The Department of the Treasury, after making necessary modifications to its computer system, regulations, and administrative procedures, began implementing the administrative offset program for Social Security benefits in May 2001 with full implementation in 2002. Financial Management Service, U.S. Dep't of the Treasury, *Fact Sheet: Delinquent Debt Collection, Fiscal Year 2004, Major Accomplishments* (visited Feb. 24, 2005) <http://fms.treas.gov/news.factsheets.delinquent_debtcollection.html>.

2. Between 1984 and 1989, four institutions of higher education issued nine GSLs to petitioner. C.A. App. Supp. Rec. Exh. 1, at 45 (SER). Petitioner failed to repay most of his obligations under those loans, and, by March 2002, his debts exceeded $80,000. SER 2, at 5, 16. Although the record in this case does not contain all of the relevant information, the Department of Education advises us that its records reflect that, during the period 1991 through 1996, the affected guaranty agencies received federal reinsurance for petitioner's delinquent debts, made numerous attempts to contact petitioner and obtain collection on the defaulted loans, and ultimately assigned the loans to the Department during the period 1998 through 2001. The Department of Education also informs us that on August 22, 1999, September 14, 2001, and August 19, 2002, the Department notified petitioner by letter that his student loan obligations were subject to administrative offset; that he

had certain rights to object to administrative offset; and that he could avoid offset by making voluntary arrangements to repay the debts. See SER 1, at 44-46 (Aug. 19, 2002 notice).

In February 2002, petitioner contacted the Department of Education, asserting in part that the collection of his student loans by administrative offset was time-barred. SER 3, at 17-24. The Department responded on March 6, 2002, explaining that the HEA had abrogated all statutes of limitations on the collection of student loans. *Id.* at 35. In May 2002, the Department of the Treasury began withholding $93 per month from petitioner's Social Security payment by way of administrative offset. SER 1, at 1. The Department of Education advises us that, when petitioner started to receive additional Social Security benefits, the government correspondingly increased the offset, first to $136.50 per month on March 3, 2003; then to $139.35 on January 2, 2004; and, most recently, to $143.10 per month on January 3, 2005. The Department of Education also advises that as of January 2005, the government has collected on petitioner's loans by Social Security offsets a total of $3,555.45 and that the total remaining outstanding debt on petitioner's loans, including interest and administrative fees, is $76,414.91.

3. In March 2002, petitioner, proceeding pro se, filed a complaint in federal district court, objecting to the offset of his Social Security benefits. SER 2, at 1-23. The complaint appeared to arise under the bankruptcy statutes and alleged that petitioner had "committed acts of bankruptcy and thereby 'filed' for bankruptcy." *Id.* at 15. The complaint stated that the government's collection efforts were subject to an automatic stay, *id.* at 15, 17, and urged the district court to impose civil sanctions

on the government and/or to force the parties to enter into a settlement agreement. *Id.* at 19-20. In the midst of those assertions, the complaint also stated that the government's attempt to "garnish debtor's [Social Security] payments by administrative offset" was "time barred" under 31 U.S.C. 3716(e)(1) because "more than 10 years have passed since debtor's education loans became outstanding." SER 2, at 14a.

The district court, unable to discern the legal theory in petitioner's complaint, directed him to show cause why the complaint should not be dismissed for failure to state a claim. SER 10, at 1. Petitioner filed a response ten days later, but the district court was still unable to identify a viable federal claim. Pet. App. 8a. The court thereafter dismissed the complaint. *Ibid.*

On appeal, after briefing in which petitioner appeared pro se, the court of appeals ordered the appointment of counsel to represent petitioner. The parties subsequently filed supplemental briefs that focused on whether the ten-year statute of limitations in the Debt Collection Act applied to the collection of student loans by Social Security offset. The government "assume[d], solely for purposes" of the appeal, that petitioner's "delinquent student loans [were] over ten years old." C.A. Supp. Br. 11 n.4.

The court of appeals held that petitioner's complaint, liberally construed, should be deemed to allege a cognizable federal claim. Pet. App. 3a. The court stated that, although petitioner's statute of limitations argument was "buried in a barrage of other contentions which the district court understandably found confusing," petitioner's complaint sufficiently raised the argument that the administrative offset of petitioner's Social Security benefits was time-barred. *Ibid.*

The court of appeals held, however, that petitioner's claim should be rejected on the merits. The Ninth Circuit observed that the HEA, as amended in 1991, "overr[ode]" the Debt Collection Act's ten-year statute of limitations "as applied to student loans." Pet. App. 6a. The court further stated that, "in 1996, Congress explicitly authorized the offset of Social Security benefits." *Ibid.* The statutory scheme thus made clear that the ten-year limitations period in the Debt Collection Act did not apply to the collection of student loans by Social Security offset. *Ibid.*

ARGUMENT

The court of appeals correctly concluded that Social Security offsets to satisfy delinquent student loan debts, like all other forms of federal benefits subject to offset for student loan collection, are not subject to the ten-year statute of limitations set forth in the Debt Collection Act. We nevertheless agree with petitioner that the Court should grant review of the issue. The courts of appeals are divided on the question whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent student loans by Social Security offset, and this question is of substantial and recurring importance to the federal student loan collection program. Although this case appears to be an appropriate vehicle to address the issue, the Court may wish to hold this petition pending the disposition of the government's petition, filed today, in *Lee* v. *Paige*, 376 F.3d 1179 (8th Cir. 2004), in which the issue is squarely presented on a fully developed record.

1. The court of appeals correctly held that the Secretary of Education, in seeking repayment of delinquent federal student loans, has the authority to conduct

Social Security offsets without regard to the ten-year period specified in the Debt Collection Act, 31 U.S.C. 3716(e)(1), for the collection of federal claims. The Higher Education Act expressly abrogates all time restrictions on the collection of student loans, including those otherwise applicable to collection by way of offset. Thus, the HEA provides that, "*[n]otwithstanding any other provision of [law], * * * no limitation shall terminate the period within which * * * an offset*" can be taken by the government "for the repayment of" educational loans. 20 U.S.C. 1091a(a)(2)(D) (emphasis added). The plain terms of the HEA therefore remove any time limitation for conducting administrative offsets with respect to federal student loan debt.

Contrary to petitioner's contention (Pet. 19-22), there is no basis for limiting the plain language of the HEA and distinguishing offsets of Social Security payments from other mechanisms, such as offsetting tax refunds or salary deductions from an employee's salary. Petitioner erroneously relies (Pet. 20) on the fact that 42 U.S.C. 407 requires an express Congressional statement to make Social Security benefits subject to administrative offset. The Debt Collection Act contains such an express statement, 31 U.S.C. 3716(c)(3)(A)(i), and thus satisfies the requirement of Section 407. No additional statement to the same effect was required in the HEA, because the HEA addresses the applicable statutes of limitations for the use of offsets in the collection of student loans, but it is not the provision that *authorizes* administrative offset. Only the authorization of offset is governed by an express cross-reference rule, and the relevant authorization is provided by the Debt Collection Act in 31 U.S.C. 3716, which, as stated, makes expressly clear that (notwithstanding 42 U.S.C. 407(a))

Social Security benefits are subject to offset to satisfy a claim by the federal government.[1]

Nor is it significant, as suggested by petitioner (Pet. 7, 21-22), that Congress abrogated all limitation periods under the HEA in 1991, while Social Security benefits were not subject to offset until Congress amended the Debt Collection Act in 1996. That sequence of the two enactments does not provide any basis for ignoring the plain language of the provisions. The HEA operates by its own terms regardless of the date of passage of an otherwise applicable statute of limitations. 20 U.S.C. 1091a(a)(2) ("*Notwithstanding any other provision of statute*, * * * no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset * * * initiated or taken."). In any event, when Congress in 1996 explicitly made Social Security benefits subject to offset, Congress was necessarily aware that the HEA already had rendered the Secretary exempt from the Debt Collection Act's ten-year limitation period. Therefore, as the court of appeals correctly held, the Secretary of Education may conduct Social Security offsets to collect petitioner's delinquent student loans without regard to the time limit under the Debt Collection Act. Pet. App. 6a.

2. a. Although the decision of the court of appeals is correct, we agree with petitioner that the Court should grant review of the issue. The courts of appeals are

[1] Petitioner also relies (Pet. 8, 21) on the imposition of "safeguards" under the Debt Collection Act that limit the amount of Social Security benefits subject to offset, 31 U.S.C. 3716(c)(3)(A)(ii), and that require notice and an opportunity for agency review, 31 U.S.C. 3716(a). Petitioner does not dispute, however, that the Secretary has complied with those safeguards in this case.

divided over the question whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent student loans by administrative offset of Social Security benefits.

In contrast to the decision here, the Eighth Circuit held in *Lee* v. *Paige*, 376 F.3d at 1180, that the Secretary of Education is bound by the ten-year statute of limitations under 31 U.S.C. 3716(e). The Eighth Circuit recognized that the plain text of the Higher Education Act, as amended in 1991, "eliminated statutes of limitations" on the collection of "defaulted federal student loans." *Ibid.* The court further acknowledged that the Debt Collection Improvement Act expressly "authorize[d]" the Secretary "to recover money owed on delinquent student loans * * * by offsetting a debtor's social security benefits." *Ibid.* The court nevertheless found that Congress did not "explicitly" permit the Secretary to conduct such Social Security offsets beyond the ten-year limitations period in the Debt Collection Act. *Ibid.*

This Court's review is warranted to resolve that direct circuit conflict, which prevents the uniform administration of a central part of the federal student loan program. See *Clay* v. *United States*, 537 U.S. 522, 526 (2003) (a writ of certiorari was granted "[t]o secure uniformity in the application of" the federal statute); *Brotherhood of Locomotive Eng'rs* v. *Atchison, Topeka & Santa Fe R.R.*, 516 U.S. 152, 156 (1996) (a writ of certiorari was granted "[b]ecause of the importance of uniform nationwide application of" the federal regulatory scheme). The federal government has a substantial interest in ensuring that student loan collection proceeds on a uniform basis nationwide. *Brannan* v. *United Student Aid Funds, Inc.*, 94 F.3d 1260, 1266

(9th Cir. 1996) (the "federal student loan program * * * requires uniformly administered collection standards in order to remain viable"), cert. denied, 521 U.S. 1111 (1997). Only by applying consistent rules throughout the country can the federal government endeavor to hold each delinquent debtor accountable for her federal obligations. *Id.* at 1264-1266; see also *In re Murphy*, 282 F.3d 868, 870 (5th Cir. 2002) (the application of a "uniform[]" rule to student loan obligations "prevent[s] recent graduates from reneging on manageable debts" and helps "preserve the solvency of the student loan system"); cf. *Hodges* v. *Thompson*, 311 F.3d 316, 319 (4th Cir. 2002) (noting, in another context, that federal standards can serve to prevent individuals from "avoid[ing] their [financial] obligations simply by moving across local or state lines") (internal quotation marks omitted), cert. denied, 540 U.S. 811 (2003).

b. The Court's review is also warranted because the view adopted by the Eighth Circuit undermines the government's student loan collection efforts. The purpose of the HEA's abrogation of limitation periods is "to ensure that obligations to repay loans * * * are enforced without regard to any Federal * * * statutory * * * limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Subjecting Social Security offsets to a ten-year limitation period frustrates that purpose and significantly reduces the effectiveness of an important collection mechanism.

The offset process has proven to be an effective means of addressing the problem of student loan defaults. Thus, during the years 2000-2003, the Department of Education collected through the offset program approximately $400 million per year in delinquent

student loan debt. Financial Management Service, U.S. Dep't of the Treasury, *Fiscal Year 2003 Report to Congress: U.S. Government Receivables and Debt Collection Activities of Federal Agencies* 19 (2004).

The Secretary's ability to offset Social Security benefits for delinquent loans that are more than ten years old is integral to the success of the offset program. Administrative offset in such circumstances typically occurs only because the student debtor has successfully evaded for many years (or even decades) all other efforts to collect the debt by the lender, the guaranty agency, and the Department of Education. Moreover, the vast majority of recipients of federal student loans receive such financial assistance under the HEA when they are young adults. Many such student loan debtors will not begin to receive Social Security benefits until they reach retirement age, which may occur many years after the Department of Education is entitled to collect on defaulted student loan debts. For instance, the Department of Education advises us that, as of August 13, 2004, the Secretary had certified to the Department of the Treasury almost $7 billion in delinquent student loan debt, and that over half of that amount, *i.e.*, approximately $3.6 billion, reflected student loan debt over ten years old. For individuals having student loan debt who do not receive Social Security benefits until more than ten years after the Secretary is entitled to collect on the loans, the rule adopted by the Eighth Circuit would deprive the Secretary of the most efficient (and, in many instances, the only) means of collecting delinquent debt to the United States.

Application of a ten-year limitation period would also harm the agency's collection efforts with respect to individuals such as petitioner, who begin receiving Social

Security benefits, such as disability benefits, before retirement. SER 2, at 2. The Debt Collection Act and implementing regulations limit the amount of Social Security benefits that are subject to offset. 31 U.S.C. 3716(c)(3)(A)(ii); 31 C.F.R. 285.4(e). It therefore could take considerably more than ten years to collect many delinquent student loan obligations. For instance, in the case of petitioner, even after over two years of offsets, the Secretary has been able to collect only about $90-140 per month—or a total of approximately $3500—in order to reduce petitioner's outstanding debt that currently exceeds $75,000. A lengthy collection period is therefore necessary for the Secretary of Education to ensure maximum collection of delinquent student loans.[2]

Congress has expressly determined in the HEA that the Secretary of Education should have an unlimited amount of time to enforce student loan obligations. 20 U.S.C. 1091a(a). This Court's review of the issue is necessary to ensure that Congress's intent is evenly administered throughout the country.

c. In the court of appeals, the government assumed for purposes of the court of appeals' consideration of the appeal that at least one of petitioner's loans would have expired under the Debt Collection Act's ten-year time limit of 31 U.S.C. 3716(e), and that issue was not litigated or decided below. Upon consideration of the issue, the United States believes that the ten-year period has expired on at least a portion of petitioner's outstanding delinquent loan obligations and that therefore this case

[2] For individuals with a disability, the Secretary of Education's regulations permit administrative discharge upon a showing of total and permanent disability. 42 C.F.R. 682.402(c), 685.212(b), 674.61(b). The Department's records do not reflect that petitioner sought to avail himself of those regulations to discharge his debt.

appears to be an appropriate candidate for certiorari review. Regulations issued jointly by the Department of the Treasury and the Department of Justice provide that the Debt Collection Act's limitation period begins to run once a federal agency's "right to collect the debt first accrued," unless the government lacked actual or constructive knowledge of its right to collect the debt. 31 C.F.R. 901.3(a)(4). In this case, the Department of Education's right to collect petitioner's debts by way of administrative offset first accrued upon the Department's payment of reinsurance to a guaranty agency. At that time, the debt was subject to collection by administrative offset under the Debt Collection Act. 31 U.S.C. 3716(c)(6); 34 C.F.R. 682.410(b)(6)(ii).

The record reflects that the earliest date that the Department reinsured a portion of petitioner's debt occurred in 1991. SER 1, at 44. Thus, absent circumstances that would have prevented the collection of petitioner's debt by offset, and therefore would have tolled the limitation period under Section 3716(e), the ten-year period with respect to petitioner's debt obligations began to expire in 2001, before the Department of the Treasury began offsetting petitioner's Social Security payments in May 2002. Because the issue was not litigated below, however, no court has passed on the question whether the ten-year limitation period (if deemed applicable notwithstanding the HEA's abrogation of all limitations periods) would bar the government from collecting any of petitioner's debts through administrative offset of Social Security benefits. Moreover, although we are not aware of any filing of bankruptcy by petitioner that might have tolled the ten-year period by virtue of the Bankruptcy Code's automatic stay provision, 11 U.S.C. 362, petitioner's complaint, albeit drafted

without the benefit of counsel, alleges a filing of bankruptcy and invokes the protection of the automatic stay provision. SER 2, at 4, 15, 17. Because the applicability of the Debt Collection Act's time limit to the facts of this case was not addressed below, this Court may wish to hold the petition pending the Court's disposition of the Secretary of Education's petition in *Lee*, *supra*, which is being filed today. In that case, the debtor was represented by counsel in the district court and the record is clear that the ten-year limitation period under the Debt Collection Act has expired with respect to all the outstanding student loan debts at issue.

CONCLUSION

The petition for a writ of certiorari should be granted or, in the alternative, held pending the disposition of the petition in *Lee*, *supra*.

Respectfully submitted.

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FEBRUARY 2005

MAR 7 - 2005
OFFICE OF THE CLERK

No. 04-881

IN THE
Supreme Court of the United States

JAMES LOCKHART,
Petitioner,

v.

UNITED STATES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY

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PETITIONER'S REPLY

The government has not filed an opposition but rather a brief in which it agrees with the basic point of Mr. Lockhart's petition: "This Court's review is warranted to resolve [a] direct circuit conflict, which prevents the uniform administration of a central part of the federal student loan program." Gov't Br. 11. As the government acknowledges, because this case came to the Ninth Circuit on the government's motion to dismiss, Mr. Lockhart's allegations that his student loans are more than 10 years past due and "would have expired under the Debt Collection Act's ten-year time limit of 31 U.S.C. 3716(e)," *id.* at 14, must be taken as true. The government goes further, however, and acknowledges that, in fact, the 10-year period has expired with respect to at least some of Mr. Lockhart's loan obligations "and that therefore this case appears to be an appropriate candidate for certiorari review." *Id.* at 14-15; *see id.* at 8 (same).

Nevertheless, the government suggests that the Court "may wish to hold this petition" pending disposition of *Spellings v. Lee*, No. 04-1139 (filed Feb. 25, 2005), where, the government asserts, "the issue is squarely presented on a fully developed record." Gov't Br. 8. There is no reason to hold this petition—which was filed nearly two months before *Lee*—because it is as good a vehicle (if not a better vehicle) for resolving the question presented. The fact that this case comes before the Court from the granting of a motion to dismiss, where the facts have not been judicially determined, is irrelevant. This Court frequently resolves legal questions that come to it after the grant of a motion to dismiss for failure to state a claim—after all, the principal purpose of such a motion is to isolate purely legal issues from facts that may ultimately be disputed—and thereafter remands to the lower courts for application of the Court's ruling. Here, the government does not argue, nor could it, that this Court's resolution of the

question presented will somehow be hindered by the procedural posture of this case or by concerns over the facts. In short, if this Court grants certiorari in this case, there is no doubt that it will be able to resolve the question presented cleanly and definitively.

The government's speculation about whether the Debt Collection Act's 10-year limitations period could have been tolled by a bankruptcy filing, Gov't Br. 15-16, is irrelevant for two reasons. First, as noted above, the *only* issue presented in this case is the one decided by the Ninth Circuit adversely to Mr. Lockhart: whether the 10-year limitations period bars collection of Mr. Lockhart's student loans. If there were a bankruptcy filing relevant to this case, that issue—like any other issues not decided below or not presented in the petition—would be taken up on remand. Second, consistent with the government's statement that it is not aware of any bankruptcy filing by petitioner that would have tolled the 10-year limitations period, Gov't Br. 15, Mr. Lockhart has, in fact, never filed for bankruptcy. The *pro se* complaint's references to "bankruptcy" were based on Mr. Lockhart's lay understanding that his payment of a private student loan debt before satisfaction of his federal loan debt constituted "acts of . . . bankruptcy." SER 2, at 15. Thus, even assuming (incorrectly) that a bankruptcy filing would somehow undermine the petition's "certworthiness," this case remains an ideal vehicle for resolving the question presented because Mr. Lockhart has never filed for bankruptcy.*

---

*We are informed that the respondent in *Spellings v. Lee* intends to oppose certiorari, among other reasons, on grounds related to respondent Lee's particular circumstances. If, however, the Court were inclined to grant both petitions, we (continued...)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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*(...continued)
agree with the government's suggestion that it would be proper for the Court to consolidate the two cases and treat the government as respondent in both cases for briefing and argument. *See* Petition in *Spellings v. Lee*, at 8 n.1.

(4)

Supreme Court, U.S.
FILED
JUL 7 - 2005
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NO. 04-881

IN THE

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JAMES LOCKHART,
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v.

UNITED STATES, *et al.*,
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On Writ of Certiorari to the
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BRIEF FOR PETITIONER

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QUESTION PRESENTED

Does the anti-attachment provision of the Social Security Act, 42 U.S.C. § 407, combined with the provision of the Debt Collection Act that prohibits the government from using its offset authority to recover debts that have been outstanding for more than 10 years, 31 U.S.C. § 3716(e)(1), prevent the United States from offsetting social security benefits to collect a student loan debt that has been outstanding for more than 10 years?

LIST OF PARTIES

Petitioner:
James Lockhart

Respondents:
United States of America
Secretary of Education of the United States
Secretary of the Treasury of the United States
Attorney General of the United States

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the court of appeals is reported at 376 F.3d 1027 and is reproduced in the appendix to the petition for a writ of certiorari (Pet. App.) at 1a. The court of appeals' unreported order denying petitioner's petition for rehearing is reproduced at Pet. App. 9a. The district court's unreported order dismissing the complaint is reproduced at Pet. App. 8a.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A timely petition for rehearing was denied on November 4, 2004. The petition for a writ of certiorari was filed on December 29, 2004, and granted on April 25, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The anti-attachment provision of the Social Security Act of 1935, as amended, 42 U.S.C. § 407, provides:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

In 1991, Congress enacted the following amendment to the Higher Education Act of 1965, 20 U.S.C. § 1091a(a):

> (2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by–
>
> . . . .
>
> (D) the Secretary [of Education], the Attorney General, the administrative head of another Federal agency . . . for the repayment of [a student loan] . . . that has been assigned to the Secretary . . . .

In 1996, Congress enacted the Debt Collection Improvement Act (DCIA), as an amendment to the Debt Collection Act of 1982. The DCIA made social security benefits subject to offset as a means for collecting debts owed to the government. However, the DCIA also recodified a provision that prohibits the government from using its offset authority to recover debts that have been outstanding for more than 10 years. The statute, codified at 31 U.S.C. § 3716, provides in relevant part as follows:

> (c)(3)(A)(i) Notwithstanding any other provision of law (including sections 207 and 1631(d)(1) of the Social Security Act (42 U.S.C. 407 and 1383(d)(1)) . . . except as provided in clause (ii), all payments due to an individual under . . . the Social Security Act . . . shall be subject to offset under this section.
>
> (ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under

> clause (i) within a 12-month period shall be exempt from offset under this subsection.
>
> . . . .
>
> (e) This section does not apply–
>
> (1) to a claim under this subchapter that has been outstanding for more than 10 years; or
>
> (2) when a statute explicitly prohibits using administrative offset to collect the claim or type of claim involved.

STATEMENT OF THE CASE

In the 1980's, petitioner James Lockhart took out federally guaranteed student loans issued by various lenders to finance his higher education. After Mr. Lockhart was unable to repay most of them because of health problems and resulting dire economic circumstances, the loans were assigned to the Department of Education as provided by law. *See generally* 34 C.F.R. § 682.409. At the time Mr. Lockhart filed this suit, his only income consisted of social security disability benefits, which were thereafter converted to retirement benefits when Mr. Lockhart turned 65 in 2003. However, since 2002, those benefits have been reduced by the government to collect Mr. Lockhart's past-due student loans.

The parties agree that, since 1991, no statute of limitations applies to most efforts by the government to collect delinquent student loans. They also agree that, since 1996, the government has been authorized to collect outstanding student loan debt through the administrative offset of social security benefits. But the parties do *not* agree that an administrative offset of social security benefits to collect student loan debt can be effected at any time, as the government maintains. Rather, as we show below, Congress has prohibited such administrative offsets to collect debt that has been outstanding for more than

10 years, and, therefore, the offset of Mr. Lockhart's social security benefits to collect older debt is unlawful. *See* 31 U.S.C. § 3716(e)(1). That conclusion is underscored by the Social Security Act's anti-attachment provision, 42 U.S.C. § 407, which prohibits seizure of social security benefits except in narrow circumstances not present here.

A. Statutory Framework

Answering the question presented requires the synthesis of four provisions enacted at four different points in time and contained in three distinct statutory schemes: the Social Security Act, the Higher Education Act, and the Debt Collection Act (as amended by the Debt Collection Improvement Act). The chronology of these enactments is crucial to understanding why the government lacks authority under the Debt Collection Act to offset Mr. Lockhart's social security benefits to collect student loan debt that has been outstanding for more than 10 years and how the Ninth Circuit erred in holding to the contrary.

1. The Social Security Act of 1935

The Social Security Act of 1935, as amended, establishes various social insurance programs for wage earners and their dependents, 42 U.S.C. § 401, *et seq.* These programs were designed principally to provide Americans minimum levels of income to buffer the economic insecurity that often accompanies old age. *See* H.R. Rep. No. 74-615, at 1-10 (1935); S. Rep. No. 74-628, at 2-10 (1935); *see also In re Buren*, 725 F.2d 1080, 1084 (6th Cir. 1984).

The benefits paid by these programs have always been protected by a very strict anti-attachment provision. The provision states that "none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. §

407(a). As this Court has recognized, "[t]he language is all-inclusive." *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415 (1973). "[I]t imposes a broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417; *accord Bennett v. Arkansas*, 485 U.S. 395 (1988).

In 1983, Congress strengthened the already broad protection afforded by the anti-attachment provision in response to bankruptcy court decisions permitting the attachment of social security benefits by bankruptcy trustees based on the supposed repeal by implication of section 407 by the Bankruptcy Reform Act. *See, e.g.*, S. Rep. No. 98-23, at 82-83 (1983), *reprinted in* 1983 U.S.C.C.A.N. 301-02; *see also United States v. Duvall*, 704 F.2d 1513 (11th Cir. 1983). Congress added an unusual prohibition: "No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." Pub. L. No. 98-21, § 335(a), 97 Stat. 130 (1983) (codified at 42 U.S.C. § 407(b)).

2. The Debt Collection Act of 1982

Several statutes authorize federal agencies, including the Department of Education, to employ a number of means to collect debts owed to the United States. In addition to filing suit to obtain or collect a judgment, the Secretary of Education may collect student loan debts through other legal processes. For example, federal law allows agencies to collect a debt by directing the Department of the Treasury to intercept tax refunds, 31 U.S.C. § 3720A, or, where a debt is owed by a federal employee, by deducting part of the employee's salary. 5 U.S.C. § 5514. The Department of Education also has authority to garnish the wages of private employees by issuing administrative garnishment orders. 20 U.S.C. § 1095a.

This case concerns a particular debt collection tool

available to federal agencies. The Debt Collection Act of 1982 (DCA) authorizes the federal government to collect debts by means of "administrative offset," 31 U.S.C. § 3716(a), which the Act defines as "withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim." *Id.* § 3701(a)(1). The Treasury Department operates a centralized program, known as the Treasury Offset Program, that is used by federal agencies to collect debt by offsetting various payments, including tax refunds and federal salaries. Under this program, creditor agencies, such as the Department of Education, certify to the Secretary of the Treasury nontax debts that are over 180 days delinquent to be collected by administrative offset. 31 U.S.C. § 3716(c)(6). After providing notice allowing the alleged debtor to challenge the offset or to seek to settle the government's proposed offset, *id.* §§ 3716(a), (c)(7), the officials disbursing payments on behalf of federal agencies withhold funds to pay the claim.

The DCA, however, specifically exempts two categories of claims from administrative offset. First, the government's offset authority "does not apply . . . to a claim under this subchapter that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1) (previously codified at 31 U.S.C. § 3716(c)(1)).[1] Second, the government lacks offset authority

[1]In the original DCA, enacted in 1982, the 10-year bar was stated somewhat differently. *See* Pub. L. 97-365, § 10(2), 96 Stat. 1754 (1982) (codified at 31 App. § 954(a)) ("[N]o claim under this Act that has been outstanding for more than ten years may be collected by means of administrative offset."). Shortly thereafter, the provision was re-worded to read as it does in the text and was recodified at 31 U.S.C. § 3716(c)(1), as part of a revision of Title 31 of the United States Code. *See* Pub. L. 97-452, § 1(16)(A), 96 Stat. 2472 (1993).

"when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved." *Id.* § 3716(e)(2) (previously codified at 31 U.S.C. § 3716(c)(2)).[2]

By virtue of the Social Security Act's anti-attachment provision, the government's administrative offset authority did not extend to social security benefits at the time of the DCA's enactment in 1982, as acknowledged in the Department of Education's implementing regulations. *See* 51 Fed. Reg. 24,095, 24,099 (July 1, 1986) (originally codified at 34 C.F.R. § 30.20(c)(2); now codified at 34 C.F.R. § 30.20(b)(2)). As explained below, social security benefits did not become subject to offset until 1996, when the DCA was amended.

3. Higher Education Technical Amendments of 1991

In 1991, Congress amended the Higher Education Act of 1965 to provide that obligations to repay federal student loans and grant overpayments would, in most instances, be enforceable without regard to limitations periods. The amendment stated: "Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by" the Secretary of Education or another government agency "for the repayment of [a student loan] . . . that has been assigned to the Secretary." Higher Education Technical Amendments of 1991 (HETA), Pub. L. No. 102-26, § 3, 105 Stat. 123, 124 (1991) (codified at 20

[2]As initially enacted, this provision prohibited offset "when a statute explicitly *provides for or* prohibits using administrative offset to collect the claim or type of claim involved." *See* Pub. L. 97-452, § 1(16)(A), 96 Stat. 2472 (1983) (codified at 31 U.S.C. § 3716(c)(2)) (emphasis added). *See infra* at 21-22 (discussing this change).

U.S.C. § 1091a(a)(2)).

HETA's legislative history indicates that Congress was concerned primarily with the government's collection of student loan debt through the offset of *tax refunds*, as authorized by 31 U.S.C. § 3720A. The amendment was a direct response to *Grider v. Cavazos*, 911 F.2d 1158, 1164-65 (5th Cir. 1990), which held that student loan debt could not be collected by tax refund offset if the debt had been delinquent for more than 10 years.[3] *See* 137 Cong. Rec. H1808, H1810 (daily ed. Mar. 19, 1991) (statement of Rep. Ford) (noting that amendment "overcomes a recent circuit court decision that puts in jeopardy the ability of the Department of Education to collect defaulted student loans through offsets of income tax refunds and other means. In particular, the bill would eliminate the statute of limitations with respect to recovery of defaulted student loans through offsets of Federal income tax refunds, litigation, and garnishment, where otherwise permitted by Federal law."); *id.* at H1812 (statement of Rep. Barrett) ("[W]e are restoring the highly successful tax offset mechanism to collect on defaulted student loans.").

The HETA amendment neither mentioned social security benefits nor made express reference to the Social Security Act's anti-attachment provision, 42 U.S.C. § 407. That is not surprising, because, at the time the amendment was enacted, the government did not have the authority to offset social security benefits under any circumstances. As explained immediately below, that authority did not exist until 1996.

---

[3]Section 3720A does not itself contain a limitations period, but it requires the Treasury Department to issue regulations prescribing, among other things, "the time or times at which agencies must submit notices of past-due legally enforceable debts." 31 U.S.C. § 3720A(d). The Treasury Department, in turn, issued a regulation establishing a 10-year bar. *See Grider*, 911 F.2d at 1161.

4. The Debt Collection Improvement Act of 1996

In 1996, Congress enacted the Debt Collection Improvement Act (DCIA), a comprehensive amendment to the Debt Collection Act that expanded the debt collection tools available to the government. *See* Pub. L. No. 104-134, § 31001, 110 Stat. 1321-358 (1996). The DCIA authorized the withholding of social security payments through administrative offset for the first time, making the express reference to the Social Security Act's anti-attachment provision required by 42 U.S.C. § 407(b). *See* 31 U.S.C. § 3716(c)(3)(A)(i); *supra* at 2 (quoting provision).

However, the DCIA also imposed a number of important safeguards and limitations. For example, the first $9,000 of social security or other payments are exempt from offset. *Id.* § 3716(c)(3)(A)(ii); *see also* 31 C.F.R. § 285.4(e)(1). Furthermore, in seeking to "ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims," Pub. L. No. 104-134, § 31001(b)(5), 110 Stat. 1321-359 (1996), the DCIA required that agencies adopt uniform regulations on collection by administrative offset, 31 U.S.C. § 3716(b), and that the official conducting the administrative offset provide the payee with notice of the offset and information to enable the payee to contact the agency with concerns regarding the offset. *Id.* § 3716(c)(7). The DCIA also recodified a part of the Debt Collection Act providing that administrative offsets may only be imposed after the debtor has been given notice of the agency's claim, an opportunity to contest the debt in administrative review, and an opportunity to negotiate an agreement for repayment. *Id.* § 3716(a).

Most importantly for this case, the DCIA recodified the DCA's provision stating that the government's offset authority

"does not apply" "to a claim . . . that has been outstanding for more than 10 years," which previously had been codified at 31 U.S.C. § 3716(c). *See* 31 U.S.C. § 3716(e)(1).

The DCIA's legislative history shows that Congress was particularly concerned about the impact that administrative offset might have on social security beneficiaries and intended the government to strictly observe safeguards and limitations on its offset authority. "Such safeguards are critical," the Conference Report emphasized, "when benefits such as Social Security are the sole or major source of income for the debtor." H.R. Conf. Rep. No. 104-537, 142 Cong. Rec. H4187, H4286-87 (daily ed. Apr. 30, 1996).

5. The Failed 2004 Effort to Amend the DCA to Authorize Offset of Debts Outstanding for More Than 10 Years and to Provide an Express Reference to Section 407

One other piece of legislation bears mention. Late last year, there was a failed effort to amend the DCA to authorize government offset regardless of how long the underlying debt has been outstanding. Moreover, this legislation would have made an express reference to the anti-attachment provision, 42 U.S.C. § 407, to authorize the offset of social security benefits to collect debts that have been outstanding for more than 10 years. The amendment, which was introduced in identical form in both the House of Representatives and the Senate, provided as follows:

> Subsection (e) of section 3716 of title 31, United States Code, is amended to read as follows:
> "(e)(1) Notwithstanding any other provision of law (including 42 U.S.C. 407 and 1383(d)(1), 30 U.S.C. 923(b), and 45 U.S.C. 231(m), regulation, or administrative limitation, no limitation shall terminate the period within which an offset may be initiated or taken pursuant to this section.
> "(2) This section does not apply when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved."

H.R. 5025, § 642, 108th Cong. (introduced Sept. 8, 2004); *see also* S. 2806, § 642,108th Cong. (introduced Sept. 15, 2004). These provisions were adopted verbatim from the President's proposed fiscal year 2005 budget. *See* Fiscal Year 2005 Budget of the United States Government, Appendix (Government-Wide General Provisions), at 13 (§ 636) (available at www.whitehouse.gov/omb/budget/fy2005/pdf/appendix/ggp.pdf) (last visited July 5, 2005). The provision was struck in the conference committee negotiating the omnibus appropriations bill for fiscal year 2005, and thus was not included in the Consolidated Appropriations Act that was signed by the President on December 8, 2004. *See* Pub. L. No. 108-447, 118 Stat. 2809 (2004).

B. Factual Background

At the time he brought this lawsuit, petitioner James Lockhart survived on a fixed income consisting of $874 in monthly Social Security Disability (SSD) benefits and $10 in monthly food stamps. SER 17 at 23-24.[4] Following his sixty-fifth birthday in July 2003, Mr. Lockhart's period of disability ended, and he began receiving old-age benefits. *See* 20 C.F.R. § 404.321(c)(1).

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[4]Citations to "SER" refer to the Supplemental Excerpts of Record filed by Mr. Lockhart in the court of appeals. For each reference, the first number is the document number and the second number is the page number.

In addition to ordinary living expenses, Mr. Lockhart must use his monthly benefits to pay for significant medical expenses. He underwent double bypass heart surgery in 1999 and requires six prescription medications for his lingering cardiovascular problems. SER 3 at 28. He also suffers from Type 2 diabetes, which requires him to purchase additional medical supplies. *Id.* Not surprisingly, he struggles to meet these expenses with his limited social security benefits. *Id.* 2 at 12.

Mr. Lockhart became unemployed in 1981, and his only subsequent employment lasted for a few months in 1987. *Id.* 2 at 6-7. He attended several institutions of higher education between 1984 and 1990, borrowing a series of federally guaranteed educational loans. *Id.* 2 at 7. He was unable to repay the majority of these loans, and the earliest debt was assigned to the Department of Education in October 1991. *Id.* 1 at 44.

On February 6, 2002, Mr. Lockhart was notified that his social security benefits would be withheld to offset his student loan debt. *Id.* 2 at 9. Mr. Lockhart contacted the Department of Education the following day to request an administrative review of the decision to offset his payments. *Id.* On April 4, 2002, he received official notification from the Department of the Treasury that his benefits would be offset up to 15% each month to pay the delinquent student loan debts. *Id.* 18 at 31. The government began offsetting his benefits in May 2002 and is continuing to do so.

C. Proceedings Below

1. District Court

Mr. Lockhart filed this action *pro se* in the District Court for the Western District of Washington on March 20, 2002, seeking an injunction prohibiting the government from offsetting his social security benefits. Mr. Lockhart's complaint

alleged that the United States's "attempt to garnish [his] SSD payments by administrative offset is time barred under 31 U.S.C. Sec. 3716(e)(1), as amended, because more than 10 years have passed since [his] education loans became outstanding." SER 2 at 14; *see also id.* 3 at 18 ("The Department of Education (ED) commenced its offset action . . . well over ten years after the time Lockhart's loans became outstanding.").[5] On May 16, 2002, the district court, acting *sua sponte*, ordered Mr. Lockhart to show cause why his complaint should not be dismissed for failure to state a claim and for lack of subject matter jurisdiction. Mr. Lockhart responded to the order and attempted to clarify his allegations, but the district court summarily dismissed the complaint. Pet. App. 8a.

2. Court of Appeals

The Ninth Circuit affirmed. Pet. App. 1a-7a.[6] The panel based its decision on a sweeping interpretation of the government's authority to offset social security benefits under the DCIA, 31 U.S.C. § 3716(c)(3)(A)(i). The court opined that the DCIA "explicitly removes any protection under section 407 that Social Security benefits may have had from offset, and thus allows the government to reach Lockhart's benefit[s] in order to collect on his debt." *Id.* 6a. The court recognized, however, that the 1996 Act had recodified the express bar on the

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[5] In its brief in response to the petition for a writ of certiorari, the government acknowledged that at least some of Mr. Lockhart's debt had been outstanding for more than 10 years before the Treasury Department sought to offset Mr. Lockhart's social security benefits. *See* Br. for the United States 15 (filed Feb. 25, 2005).

[6] Mr. Lockhart filed his appeal *pro se* and completed a full round of briefing without the benefit of counsel. A second round of briefing was completed after the University of Arizona College of Law's Pro Bono Appellate Project agreed to represent Mr. Lockhart in the court of appeals.

government's authority to collect by offset debt that has been outstanding for more than 10 years. Thus, the court observed, "[a] puzzle has been created by the codifiers." *Id.*

The Ninth Circuit's solution to this "puzzle" relied on a theory of implied repeal. "[I]t seems clear," the court explained, "that in 1996, Congress explicitly authorized the offset of Social Security benefits, and that in the Higher Education Act of 1991, Congress had overridden the 10-year statute of limitations as applied to student loans. That the codifiers [of the 1996 Act] failed to note the impact of the 1991 repeal on section 3716(e) does not abrogate the repeal." *Id.* Accordingly, the court concluded, all of Mr. Lockhart's debts could be collected by offset regardless of how long they had been outstanding. *Id.* 7a. The Ninth Circuit did not explain how its reasoning could be reconciled with the Social Security Act's anti-attachment provision or the express reference provision of 42 U.S.C. §407(b).

SUMMARY OF ARGUMENT

The Ninth Circuit's decision should be reversed because it cannot be squared with the chronology of the relevant enactments, the Social Security Act's express reference provision, and the text of the DCIA.

The government's reliance on HETA's abrogation of limitation periods for collection of student loan debt, 20 U.S.C. § 1091a(a)(2), falters in light of the order of the relevant enactments. When HETA was enacted in 1991, Congress could not have intended that it would apply to the offset of social security benefits because, at that time, Congress had not yet made the express reference to the Social Security Act's anti-attachment provision, *see* 42 U.S.C. § 407, that was necessary to provide the government with the authority to offset social security benefits.

In 1996, Congress made an express reference to 42

U.S.C. § 407, authorizing offset of social security benefits, *see* 31 U.S.C. § 3716(c)(3)(A)(i), but it did so in an act (the DCIA) that recodified a part of the Debt Collection Act prohibiting the government from using administrative offset to collect a debt that has been outstanding for more than 10 years. *See* 31 U.S.C. § 3716(e)(1). Put otherwise, that provision did no more than authorize offsets of social security benefits to collect debts that have been outstanding for 10 years or less. Neither the DCIA nor any statute specifically referencing section 407 authorizes collection by offset of student loan debt that has been outstanding for more than 10 years. The Ninth Circuit's decision should therefore be reversed because it allows HETA to "limit, supercede, or otherwise modify" section 407's strict anti-attachment provision *without* the required express reference to that section, in violation of 42 U.S.C. § 407(b).

The text and history of the DCIA also require reversal. The express reference to section 407 authorizing offset of social security benefits was not enacted as a stand-alone provision, but as part of the DCIA. The DCIA comprehensively reviewed and overhauled the Debt Collection Act, but retained the 10-year bar on offset authority, indicating that Congress meant the 10-year bar to apply to *all* offsets, including offsets of social security benefits to recover student loan debts, just as it had when it enacted the Debt Collection Act in 1982. That understanding of the DCIA is also required by the canon of statutory construction that amendments should be read to include the provisions of the original act into which they are inserted. 1A *Sutherland Statutory Construction* § 22.34 (6th ed. 2002). For these reasons, the government's authority to offset Mr. Lockhart's social security benefits "does not apply" when the government is seeking to recover a student loan debt that has been outstanding for more than 10 years. *See* 31 U.S.C. § 3716(e)(1).

ARGUMENT

THE CHRONOLOGY OF THE RELEVANT ENACTMENTS, THE SOCIAL SECURITY ACT'S ANTI-ATTACHMENT AND EXPRESS REFERENCE PROVISIONS, AND THE TEXT OF BOTH HETA AND THE DCIA REQUIRE REVERSAL.

A. HETA's Abrogation of Statutes of Limitations in 1991 Does Not Apply to the Offset at Issue Here Because the Authority to Offset Social Security Benefits Did Not Exist at That Time and the Later-Enacted DCIA Contains a 10-Year Bar on Offset Authority.

1. Based solely on the legislative chronology discussed above (at 4-11), the Court should reject the government's position in this case. That position depends on the passage in 1991 of HETA, which overrode existing limitations periods regarding collection of student loans. However, in 1991, the government had no authority to offset social security benefits (which did not exist until 1996, with the enactment of the Debt Collection Improvement Act). Therefore, Congress could not, in 1991, have intended to eliminate a time bar that would have applied to the offset of social security benefits. As the Eighth Circuit has put it: "[W]hen 'Congress removed all statute of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments, because such payments were not yet subject to offset[.]'" *Lee v. Paige*, 376 F.3d 1179, 1180 (8th Cir. 2004) (quoting *Lee v. Paige*, 276 F. Supp. 2d 980, 984 (W.D. Mo. 2003)), *pet. for cert. pending sub. nom.*, *Spellings v. Lee*, No. 04-1139 (U.S. filed Feb. 25, 2004); *accord Guillermety v. Sec'y of Educ.*, 241 F. Supp.2d 727, 753 (E.D. Mich.2002).

The Ninth Circuit's contrary ruling – which adopts the government's view (*see* Pet. App. 17a) – misses the mark. The court of appeals opined that the fact that "the codifiers [of the DCIA] failed to note the impact of the 1991 repeal on [the DICA's 10-year bar] does not abrogate the repeal." Pet. App. 6a. But that simply begs the question: What was it that Congress was repealing in 1991? It makes sense to say that Congress was repealing *existing* statutes of limitations applicable to *then-valid* means of debt collection. But it makes no sense to ascribe to Congress the repeal of a time bar regarding the offset of social security benefits because, at that time, there was no such thing to repeal.

2. Indeed, the government's view that it can collect student loan debt at any time by offsetting social security benefits runs headlong into the Social Security Act's anti-attachment provision, 42 U.S.C. § 407(a), and its express reference requirement. *Id.* § 407(b). The parties agree that both when 42 U.S.C. § 407(a) was enacted in 1935, and when the express reference provision was added in 1983, the anti-attachment provision barred offsets of social security benefits to collect student loans. *See* 51 Fed. Reg. 24,095, 24,099 (July 1, 1986) (originally codified at 34 C.F.R. § 30.20(c)(2); now codified at 34 C.F.R. § 30.20(b)(2)) (Secretary of Education does not have offset authority under Debt Collection Act if "the payment against which offset would be taken . . . arises under the Social Security Act"); Br. for Appellants Secretary of Education, *et al.*, at 8, in *Guillermety v. Sec'y of Educ.*, No. 03-1604 (6th Cir. filed Sept. 25, 2003) (Debt Collection Act of 1982 "did not authorize offsets of social security benefits, because it did not contain the explicit reference to 42 U.S.C. 407 that 42 U.S.C. 407(b) requires."). The parties also agree that HETA's 1991 provision abrogating existing limitations

periods with respect to student loan debt did not alter the bar on social security offsets because it did not address offset authority, let alone contain the express reference to section 407 that would subject social security benefits to offset.

The government maintains that these facts are irrelevant because of the subsequent enactment of the DCIA in 1996, specifically 31 U.S.C. § 3716(c)(3)(A)(i), which subjected social security benefits to offset and expressly referred to section 407. But that argument misapprehends the 1996 enactment. As explained in greater detail below (at 20-23), the 10-year bar on offset authority is a part of the DCIA. And neither the DCIA nor any statute specifically referencing section 407 authorizes collection by offset of student loan debt, or any other debt, that has been outstanding for more than 10 years.

Thus, the only way for the government to reach the result it desires is to use HETA, 20 U.S.C. § 1091a(a)(2), to create offset authorization beyond 10 years, even though that enactment does not expressly reference 407. In other words, the government is demanding that a "provision of law" – HETA – "be construed to limit, supersede, or otherwise modify the provisions of" 42 U.S.C. § 407, *without* Congress having made an "express reference to th[at] section." *See id.* § 407(b). The government's position must be rejected because it seeks to enlarge the scope of the government's offset authority via section 1091a(a)'s purported implied repeal of the bar on offsetting social security benefits to collect debt that has been outstanding for more than 10 years – which is precisely what section 407(b) forbids. *See Philpott*, 409 U.S. at 416 (rejecting, as contrary to statutory text, "an implied exemption from § 407"); *Bennett*, 485 U.S. at 397-98 (same); *In re Buren*, 725 F.2d at 1085-87.

3. Mr. Lockhart need not rely on the chronology of the enactments alone. The section of HETA that eliminated

limitations periods "notwithstanding any other provision of statute, regulation, or administrative limitation," 20 U.S.C. § 1091a(a)(2), is most naturally read as applying only to *existing* limitations. In the first place, it does not expressly refer to future enactments. Moreover, the legislative history buttresses that conclusion because the motivating factor for the enactment of section 1091a(a)(2) was a circuit court decision that restricted the time period for offsetting tax refunds to collect student loan debt – offset authority that already existed under 31 U.S.C. § 3720A. *See supra* at 8 (legislative history describing impetus for section 1091a(a)(2)). Congress's specific focus on offset authority under pre-existing legislation is reason to reject the notion that Congress meant to reach not-yet-contemplated legislation.

Aside from the specific circumstances presented by the 1991 HETA provision at issue here, it should not be presumed that Congress would, ordinarily, want its current enactments to operate on future legislation in the manner demanded by the government's interpretation of section 1091a(a)(2). Such expansive interpretations would run the risk of conflict with other legislative objectives (as in this case, with the policy of protecting social security benefits from creditors), because an earlier Congress cannot know what a later one would desire. It thus makes sense to force Congress to speak clearly; Congress can, if it chooses, draft legislation to demonstrate its intent to affect future legislation. A prime example is the Social Security Act's anti-attachment statute, 42 U.S.C. § 407, discussed above. Subsection (a) of section 407 broadly bars the assignment or transfer of "any future payment" of social security benefits and bars creditors from reaching such benefits. Of particular relevance, in subsection (b) of section 407, Congress established the sole circumstances under which subsection (a) may be overridden, *at any time*, when it said that "[n]o other provision of law, enacted before, on, or *after* April 20, 1983"

could limit the anti-attachment provision without expressly referring to section 407. 42 U.S.C. § 407(b) (emphasis added). *See also* 28 U.S.C. § 1658(a) (unless otherwise provided by law, four-year statute of limitations applies for causes of action created by future acts of Congress). In enacting 20 U.S.C. § 1091a(a)(2), however, Congress did not refer to future enactments in this way.

In this regard, it is important to recall that, at the end of the 108th Congress, the Bush Administration proposed to expressly eliminate any time bar on administrative offset in an amendment to the DCA that contained an express reference to section 407. That provision was included in both the House and Senate versions of the Transportation, Treasury and General Government Appropriations Act, but was stricken from the Conference Report shortly before the bill was approved by Congress and sent to the President. *See supra* at 10-11. Congress's rejection of this proposal, which would have achieved by legislation the result the government seeks now by judicial decree, does not reveal what Congress intended in HETA in 1991 or in the DCIA in 1996. It does, however, underscore the wisdom of making Congress speak clearly when it wishes to take the unusual step of requiring one of its current enactments to abrogate, restrict, or otherwise affect future legislation. That is so because we now know that when Congress *was* presented with legislation that would have clearly subjected Mr. Lockhart's social security benefits to offset regardless of the age of his student loan debt, it ultimately rejected that legislation.

B. The Text and History of the DCIA Require Reversal.

Special features of the 1996 DCIA further support Mr. Lockhart's position. The very law that provided the government's authority to reach social security benefits – the

DCIA – contains its own provision regarding *when* the government is empowered to use a particular method of debt collection – offset – to collect a debt, and it prohibits collection by offset of claims that have been outstanding for more than 10 years.

Two aspects of the DCIA in 1996, in particular, strongly suggest that when Congress extended offset authority to social security benefits, while retaining the 10-year bar on offset authorization, it did so with the understanding that the 10-year bar applied to *all* social security offsets, regardless of the origin of the debt. *First*, when Congress enacted the DCIA as an amendment to the Debt Collection Act, it did more than simply authorize offset of social security benefits. Rather, as explained above (at 5-7), it carefully reviewed and overhauled the Debt Collection Act. The DCIA sought to streamline debt collection efforts within and among various federal agencies, require the agencies promptly to report delinquent debt to the Treasury Department for collection, and establish due process protections for alleged debtors so that they could verify and, if necessary, challenge proposed offsets. Pub L. No 104-134, § 31001(b), 110 Stat. 1321-358 – 1321-359 (setting forth DCIA's purposes); *see generally id.* 110 Stat. 1321-358 – 321-365. In the section of the DCIA immediately prior to the section expressly authorizing offset of social security benefits, Pub L. No. 104-134, § 31001(d)(2)(D), 110 Stat. 1321-359 – 1321-360 (codified at 31 U.S.C. § 3716(c)(3)(A)(i)), Congress explicitly recodified the 10-year bar provision and moved it from subsection (c) to subsection (e) of section 3716 of Title 31. *See* Pub L. No. 104-134, § 31001(d)(2)(C), 110 Stat. 1321-359.

As part of this recodification, Congress specifically reviewed what was then 31 U.S.C. § 3716(c) (and is now, as modified, 31 U.S.C. § 3716(e)). Subsection (c) was, prior to the DCIA's enactment in 1996, the concluding subsection of

section 3716. As explained above, it addressed the instances in which the offset authority of section 3716 "does not apply." *See* Pub. L. 97-452, § 1(16)(A), 96 Stat. 2472 (1983). Subsection (c)(1) prohibited offset for claims "outstanding for more than ten years." Subsection (c)(2) prohibited offset "when a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved." As explained above, the DCIA retained the 10-year prohibition on offsets without any wording change. *See* 31 U.S.C. § 3716(e)(1). Congress did, however, alter subsection (c)(2) by eliminating the prohibition on administrative offset in situations where another statute provides for administrative offset of the claim or type of claim. *See* Pub. L. No. 104-134, § 31001(d)(2)(B), 110 Stat. 1321-359 (1996) (codified at 31 U.S.C. § 3716(e)(2)); *see supra* note 2. Thus, in 1996, Congress did more than comprehensively review and amend the Debt Collection Act. And it did more than center its attention on social security offsets. It also specifically focused on the very subsection at issue in this case – changing one part of it, *and retaining, without change, the 10-year bar on offset authority.*

For all of these reasons, it is sensible to conclude that Congress intended to apply the 10-year bar for *all* social security offsets. Put otherwise, under these circumstances, it is highly improbable that Congress intended that HETA, enacted five years earlier, should spring forward and capture offsets of social security benefits. Given Congress's express retention of the 10-year bar, Congress had to do something more if it wanted HETA to take precedence, and if it wanted to eliminate any time bar on social security offsets to recover student loan debt, the DCIA was the time and place to do it.

Second, the government's position ignores an important canon of statutory construction that "the provisions introduced

by [an] amendatory act should be read together with the provisions of the original section that were … left unchanged, in the amendatory act, as if they had been originally enacted as one section." 1A *Sutherland Statutory Construction* § 22.34 (6th ed. 2002); *accord United States v. La Franca*, 282 U.S. 568, 576 (1931); *Blair v. City of Chicago*, 201 U.S. 400, 475 (1906) (citing cases and treatise); *Natural Resources Defense Council, Inc. v. EPA*, 656 F.2d 768, 781 (D.C. Cir. 1981). The 1996 legislation authorizing social security offsets must, therefore, be interpreted to mean just what it says – as including all of the provisions of the Debt Collection Act into which it was inserted. The DCIA, therefore, authorized social security offset only as qualified by the requirement, now codified at 31 U.S.C. § 3716(e)(1), that it does not apply "to a claim … that has been outstanding for more than 10 years."

For all of these reasons, the government lacks the authority to offset Mr. Lockhart's social security benefits to collect his student loan debts that have been outstanding for more than 10 years.

CONCLUSION

The decision of the Ninth Circuit should be reversed and the case remanded with instructions that petitioner's social security benefits may not be offset to collect student loan debt that has been outstanding for more than 10 years.

Respectfully submitted,

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No. 04-881

IN THE

Supreme Court of the United States

JAMES LOCKHART,

Petitioner,

v.

UNITED STATES, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER ON BEHALF OF THE NATIONAL CONSUMER LAW CENTER, AARP, NATIONAL SENIOR CITIZENS LAW CENTER, AND THE NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES (NOSSCR)

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Dated: July 8, 2005

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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STATEMENT OF AMICI INTEREST

The National Consumer Law Center (NCLC), AARP, The National Senior Citizens Law Center and The National Organization of Social Security Claimaints' Representatives (NOSSCR) ("*amici*") are organizations that devote a considerable amount of work to protecting the financial independence of older and disabled persons.[1]

AARP is a national nonpartisan, nonprofit membership organization of more than 35 million persons age fifty and older dedicated to addressing the needs and interests of older Americans. Nationally, out of 46.4 million total Social Security beneficiaries in December 2002, 33.2 million people were age 65 or older. Social Security Bulletin, Annual Statistical Supplement, at 2 (2003), available at http://www.ssa.gov/policy/docs/statcomps/supplement/2003. Since many of AARP's members receive Social Security benefits, AARP is deeply concerned about the harm they could suffer if their benefits are not protected by a statute of limitations for educational debt. AARP has filed numerous briefs before this Court in cases involving Social Security benefits, including *Washington State Dept. of Social and Health Serv. v. Guardianship Estate of Keffeler*, 537 U.S. 371 (2003); *Barnhart v. Walton*, 535 U.S. 212 (2002); and *Sims v. Apfel*, 530 U.S. 103 (2000).

The National Consumer Law Center, Inc. (NCLC) is a Massachusetts non-profit corporation established in 1969 to conduct research, education, and litigation regarding significant consumer matters. One of NCLC's primary objectives is to assist legal

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[1] Pursuant to this Court's Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for a party and that no one other than *amici* made a monetary contribution to the preparation or submission of this brief.

services attorneys, government agencies, and private attorneys in advancing the interests of their low-income and older clients in the area of consumer law. NCLC staff write sixteen legal treatises on various federal and state statutes affecting consumer law, including a manual on Student Loan Law (2d ed. 2002 and Supp.). This case is of great importance for NCLC's low-income clients, including many disabled and older Social Security recipients living on the financial margins and struggling to preserve financial independence. NCLC was co-counsel in a case similar to Petitioner's case, *Guillermety v. Secretary of Education*, 241 F.Supp.2d 727 (E.D.Mich. 2002).

The National Organization of Social Security Claimants' Representatives (NOSSCR) is a non-profit corporation. While most NOSSCR members are attorneys in private practice, others work in programs that provide free legal services to the poor. NOSSCR members regularly represent people claiming benefits or fighting reduction or termination of benefits (usually, but not always, disability benefits) in administrative proceedings before the Social Security Administration (SSA). Benefits have been provided by Congress under various provisions of the Social Security Act. NOSSCR members also file actions in federal court against the Commissioner of SSA (currently JoAnne B. Barnhart), appealing final administrative denial, reduction, or termination of such benefits. The outcome of this case will have serious implications for NOSSCR's disabled and elderly clients, many of whom have no other source of income than their Social Security benefits.

The National Senior Citizens Law Center (NSCLC) advocates nationwide to promote the independence and well-being of low-income elderly individuals and persons with disabilities. NSCLC advocates through litigation, legislative and agency

representation and assistance to attorneys and paralegals in field programs. The Social Security program is an important priority area for NSCLC because of Social Security's critical role in alleviating poverty among older Americans and people with disabilities. NSCLC has a particular interest in preserving Social Security benefits from creditors so that the benefits can fulfill their intended function of providing for the basic needs of beneficiaries.

Amici submit this brief in support of Petitioner to provide a context within which to view the offset of Social Security benefits to collect student loan debt and to evaluate the harm to older and disabled Social Security recipients if the government is allowed to implement these offsets without regard to any time limit.

SUMMARY OF ARGUMENT

It is critical to emphasize the narrow scope of this case. The case involves the government's interest in ensuring that Social Security payments receive special protection from creditors. These payments are lifelines for retired and disabled individuals who have earned their income through years of hard work.

The case is also about following the precedent in nearly every other area of law and enforcing a time limit or statute of limitations, in this case on the government's right to collect student loans through Social Security offsets. The time limit in this case is not strictly a statute of limitations since the ten year bar is an absolute restriction on the government's authority to offset benefits. However, the rationale for a time limit, as explained in this brief, is the same regardless of whether it is classified as a statute of limitations or something else. For the sake of

convenience, the terms "time limit" and "statute of limitations" are used interchangeably in this brief.

The time limit at issue in this case applies only to government collection of student loans through the use of Social Security offsets. The case is not about imposing a limit on the government's right to collect student loans using collection strategies other than offset. In fact, Petitioner acknowledges that the elimination of the statute of limitations for student loan collection, 20 U.S.C. § 1091a(a), allows the government to use tactics such as administrative wage garnishment and litigation without regard to a statute of limitations.

Further, the government's right to employ Social Security offsets as a collection tactic is not at issue in this case. Petitioner agrees that the government has this authority through the Debt Collection Improvement Act, 31 U.S.C. § 3716. The only point of controversy is whether the government must abide by the statutorily imposed time limit when using Social Security offsets to collect student loans.

Enforcing the time limit is correct both legally and practically. This is first because of the government's special interest in ensuring that Social Security recipients receive the funds to which they are entitled if they become disabled or when they retire. Second, statutes of limitation or time limits are the norm, rather than the exception, in nearly all areas of criminal and civil law. At a policy level, this Court and lower courts have consistently affirmed the importance of statutes of limitations. The basic principles of statutory construction plus fair and equitable policy should lead the Court to enforce the ten year time limit when the government seeks to collect student loans through Social Security offset.

INTRODUCTION

Petitioner James Lockhart is a disabled man who relies upon his monthly Social Security check and limited food stamp benefits to pay for his food and prescription medication. At the time he brought this lawsuit, Mr. Lockhart's income consisted of $874 in Social Security Disability (SSD) benefits and $10 in monthly food stamps. Following his sixty-fifth birthday in July 2003, he began receiving age-related Social Security benefits.

Mr. Lockhart is seeking to enforce the provision in the Debt Collection Improvement Act which clearly imposes a time limit on the government's ability to collect debts through seizure of Social Security funds. 31 U.S.C. § 3716(e)(1). Petitioner argues that the provision in the Higher Education Act, 20 U.S.C. § 1091a(a), authorizing collection of student loans without regard to the age of the loan does not overcome the special protection that Congress has afforded to Social Security payments in the anti-attachment statute, 42 U.S.C. § 407.

ARGUMENT

I. THERE IS A STRONG PUBLIC POLICY AND SOCIAL INTEREST IN ENSURING THAT SOCIAL SECURITY RECIPIENTS RECEIVE THE BENEFITS TO WHICH THEY ARE ENTITLED

In 2005, almost 48 million Americans will receive approximately $518 billion in Social Security benefits. Thirty million of these recipients are retired workers and 6.2 million are disabled. The other recipients are dependents or survivors of workers. Social Security Administration, Press Office Fact

Sheet, available at http://www.ssa.gov/pressoffice/basicfact.htm. The Social Security Administration reports that "Social Security is the major source of income for most of the elderly" and "[a]bout two-thirds of aged Social Security beneficiaries receive 50% or more of their income from Social Security." In fact, it is the only source of income for almost one-in-five older adults in the nation. Nat'l Comm. To Preserve Soc. Sec. & Medicare, *Social Security Primer* (May 2004) available at http://www.ncpssm.org/news/archive/ssprimer.

Social Security is also essential to help sustain workers that become disabled. The Social Security Administration reports that almost 30% of today's 20 year-olds will become disabled before reaching age 67 and 72% of the private sector workforce has no long-term disability insurance. Social Security Administration, Press Office Fact Sheet, available at http://www.ssa.gov/pressoffice/basicfact.htm.

Social Security benefits are critical in preserving a measure of financial independence for older and disabled workers. For example, Social Security benefits have a powerful poverty-preventing effect among the elderly. An analysis of Census data shows that nationwide, Social Security benefits lift nearly 13 million Americans age 65 and older above the poverty line. These figures reflect a three-year average for the period from 2000 through 2002. The data indicate that leaving aside Social Security income, nearly one of every two older persons — 46.8 percent — has income below the poverty line. Once Social Security benefits are taken into account, just one in twelve — 8.7 percent — is poor. Arloc Sherman & Isaac Shapiro, Social Security Lifts 13 Million Seniors Above the Poverty Line: A State by State Analysis, Center on Budget and Policy Priorities (Feb.

24, 2005). Also available at http://www.cbpp.org/2-24-05socsec.htm.

Affirming the importance of Social Security, Congress permitted creditors to seize portions of these payments only in limited circumstances and only when a law authorizing seizure explicitly overrides the general presumption against seizing payments. 42 U.S.C. § 407. The "anti-alienation" or "anti-attachment" provision of the Social Security Act, 42 U.S.C. § 407(a), was included in the original Social Security Act passed in 1935. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 624. The House Ways and Means Committee held hearings on the law but did not debate or otherwise clarify the meaning of the anti-alienation provision. *See* H.R. Rep. No. 615, 74th Cong., 1st Sess (1935). In 1983, Congress strengthened the immunity provided by this anti-attachment statute by mandating that: No other provision of law, enacted before, on, or after April 20, 1983 may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section. 42 U.S.C. § 407(b).

This Court has observed that section 407 "imposes a broad bar against the use of any legal process to reach all social security benefits." *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 417 (1973); accord *In re Buren*, 725 F.2d 1080, 1084 (6th Cir.), *cert. denied*, 469 U.S. 818 (1984). The anti-attachment provision recognizes that, because Social Security payments are intended to meet the beneficiaries' most basic needs, those funds must be immune from creditors—including government claims—unless Congress has expressly provided otherwise. *See In re Buren*, 725 F.2d at 1084 (citing legislative history); *Dionne v. Bouley*, 757 F.2d 1344, 1355 (1st Cir. 1985).

Until passage of the Debt Collection Improvement Act in 1996, the Secretary of Education had no authority to collect loan debts by seizing Social Security income payments. In the Debt Collection Improvement Act, Congress explicitly overrode the Social Security anti-attachment provision and authorized limited administrative offset of Social Security funds. 31 U.S.C. § 3716. Congress also imposed a number of constraints on these administrative offsets, including a provision that the offset does not apply "to a claim under this chapter that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

Thus, although Congress did allow government creditors to offset Social Security benefits, they also set specific limits on these actions, including a ten year time limit that must be respected and enforced.

II. STATUTES OF LIMITATIONS ARE THE NORM IN CIVIL AND CRIMINAL CLAIMS

Petitioner's argument for enforcing the ten year time limit against government student loan collectors is clearly in line with judicial and legislative decisions in all other areas of the law, both criminal and civil. This Court has repeatedly emphasized the importance of statutes of limitations, stating, for example that "Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

Despite the government interest in pursuing criminals, for example, statutes of limitations apply to nearly all federal criminal actions. The rare exceptions exist for those crimes that are punishable by death. 18 U.S.C. § 3281 (1994). These crimes include espionage and treason, 18 U.S.C. § 794(a)

(1996); 18 U.S.C. § 2381 (1994). Other rare exceptions to the statute of limitations norm are for the prosecution of persons charged with absence without leave or missing in time of war, 10 U.S.C. § 843 (2003) and for individuals "fleeing from justice." 18 U.S.C. § 3290 (1948).

With respect to civil claims, federal district courts have found that civil actions are subject to statutes of limitations in all but a few rare instances, including patent infringement actions not involving damages, *Giese v. Pierce Chemical Co.*, 29 F.Supp.2d 33 (D.Mass. 1998); citizen suits brought under environmental protection laws such as the Federal Water Pollution Control Act, *Pub. Interest Research Group of New Jersey v. U.S. Metals Ref. Co.*, 681 F.Supp. 237 (D.N.J. 1987); and suits for injunctive relief brought by the Attorney General under the Fair Housing Act, *U.S. v. Incorporated Village of Island Park*, 791 F.Supp. 354, 365 (E.D.N.Y. 1992).

Notably, these rare exceptions do not involve debt collection cases. It is virtually unprecedented not to set a time limit for debt collection.

The primary justifications for statutes of limitation fall into two categories: those relating to the benefits of repose and finality, and those advocating against the adjudication of stale claims.

III. STATUTES OF LIMITATION ARE ESSENTIAL IN PROVIDING REPOSE FOR DEFENDANTS, FINALITY IN THE ADJUDICATION OF CLAIMS, AND AVOIDANCE OF STALE CLAIMS

This Court values repose sufficiently to have held that criminal limitation statutes are "to be liberally interpreted in favor of repose." *U.S. v. Habig*,

390 U.S. 222, 227 (1968) (quoting *U.S. v. Scharton*, 285 U.S. 518, 522 (1932). Encouraging the government to offset Social Security in a timely manner provides beneficiaries at least some level of certainty that their benefits will be protected.

The second key justification for statutes of limitation is to help avoid adjudication of stale claims. In this case, encouraging the government to act within a prescribed time limit if it uses this extraordinary collection tool affirms the importance of Social Security benefits and the dangers to a recipient if claims are brought fifteen, twenty, thirty, even forty years after the recipient has allegedly incurred the debt. This Court has frequently noted the importance of prompt adjudication of claims. *Riddlesbarger v. Hartford Ins. Co.*, 74 U.S. 386, 390 (1868) ("The policy of these statutes is to encourage promptitude in the prosecution of remedies."); *Wood*, 101 U.S. at 139 (statutes of limitation stimulate activity and punish negligence); *Campbell v. Haverhill*, 155 U.S. 610, 617 (1895) ("[statutes of limitation] secure the prompt enforcement of claims"); *Missouri, K. & T.R. Co. v. Harriman Bros.*, 227 U.S. 657, 672 (1913) ("The policy of statutes of limitation is to encourage promptness in the bringing of actions").

Another major reason to avoid adjudication of stale claims is that evidence deteriorates over time. Statutes of limitation protect defendants from having to "defend themselves against charges when the basic facts may have become obscured by the passage of time" *Toussie v. U.S.*, 397 U.S 112, 114 (1970) and beyond the point where "there is an irrebutable presumption that a defendant's right to a fair trial would be prejudiced." *U.S. v. Marion*, 404 U.S. 307, 322 (1971). In affirming this rationale for time limits, this Court observed in *Wilson v. Garcia*, 471 U.S. 261, 271 (1985) that "A federal cause of action 'brought at

any distance of time' would be 'utterly repugnant to the genius of our laws.'" (quoting *Adams v. Woods*, 2 L.Ed.2d 297 (1805)).

It is also important to encourage the government to bring claims so that defendants are on notice that their Social Security payments are at risk. *See Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 352 (1983) ("Limitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on their rights"). Notification may prompt defendants to take action to preserve favorable evidence. Documentary evidence is generally essential in order to raise defenses in student loan cases. For example, the borrower may have defenses to collection such as forgery. Borrowers also have special defenses in cases where the school closed while the borrower was in attendance or other instances where a school official engaged in fraudulent behavior. *See, e.g.*, student loan cancellation rights at 20 U.S.C. § 1087(c). These defenses become increasingly difficult to raise as time passes and evidence is destroyed or lost. Defendants may also have defenses to the amount of debt sought or with respect to other terms of the loan. Again, as time passes, it is increasingly difficult to locate key documents such as promissory notes and enrollment agreements.

Application of the statute of limitations against offset also serves to protect the important individual interest in arranging financial affairs. An individual on a fixed Social Security income often lacks the flexibility to address and respond to diminution of benefits through offset since in many cases that person is unable to work or earn significant income through work.

IV. THE TEN YEAR TIME LIMIT DOES NOT PREVENT THE GOVERNMENT FROM RESOLVING STUDENT LOAN CLAIMS ON THE MERITS

A counterargument to statutes of limitations is that claims should be resolved on their merits. This concern is easily addressed in this case. Enforcing the time limit on Social Security offsets does not in any way preclude the government from bringing an action in court to resolve the merits of a case. Further, it does not prevent the government from utilizing extra-judicial collection strategies other than offset to collect student loan debt. For example, if Mr. Lockhart worked, the government could administratively garnish his wages. If Mr. Lockhart had any assets, the government could attach those assets after getting a judgment in court. Petitioner argues for the enforcement of a time limit only where the stakes are highest—when the government seeks to seize Social Security payments.

It is also important to note that if the government went to court to collect loan debts over ten years old and obtained a judgment, it could not enforce the judgment against Social Security payments because of prohibitions against attaching or garnishing these funds.

V. THE GOVERNMENT'S INTEREST IN COLLECTING STUDENT LOANS IS NOT UNDERMINED BY A TEN YEAR LIMIT ON SOCIAL SECURITY OFFSETS

Enforcing the time limit in this case would eliminate just one small component of the government's overall student loan collection arsenal. Statistics from 2003, for example, show that the Department of Education collects the vast majority of

student loan funds through in-house and private contractor collection efforts. Substantial funds are also collected through the loan rehabilitation and consolidation programs. Of a total of about $324 million collected in fiscal year 2003, just over $10 million was collected through the Treasury Offset program, which includes both tax refund offsets and federal benefits offsets. Funds collected by guaranty agencies follow a similar pattern. Of almost $851 million collected by these agencies in fiscal year 2003, just over $6 million was attributed to Treasury Offset. United States Department of Education, Borrower Services/Collection Group, "Fiscal Year to Date Defaulted Student Loan Recoveries: As of December 31, 2003." (Available from the Department of Education). Most likely, although this is not clear from the data, only a small portion of this amount is comprised of funds collected from Social Security recipients beyond the ten year time limit.

Although the funds collected through Social Security offsets are small amounts for the government, they are huge for the most vulnerable Social Security recipients. Any reduction in benefits even of a relatively small magnitude may impose irreparable harm on vulnerable public assistance recipients. *Beno v. Shalala*, 30 F.3d 1057, 1063-64 n.10 (9th Cir. 1994). As the District Court noted in a case similar to Mr. Lockhart's case, the $99 monthly reduction in one of the plaintiffs' Social Security benefits "... may not be significant to the Government, or for that matter, to a large segment of the American population-- however, a 12% reduction in Mr. Edgmon's monthly benefits could be detrimental to his basic survival." *Guillermety v. Secretary of Education*, 241 F.Supp.2d 727, 758 (E.D. Mich. 2002).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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No. 04-881

In the Supreme Court of the United States

JAMES LOCKHART, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the Department of Education can collect defaulted student loans by offsetting a portion of a debtor's Social Security benefits without regard to the ten-year limitation period under the Debt Collection Act, 31 U.S.C. 3716(e)(1), given that Congress has expressly abrogated all otherwise applicable statutes of limitations for the collection of student loans.

PARTIES TO THE PROCEEDING

Respondents are the United States of America; Alberto Gonzales, Attorney General; Margaret Spelling, Secretary of the United States Department of Education; John Snow, Secretary of the United States Department of the Treasury. Respondents were named as defendants/appellees in the court of appeals. All respondents appear in their official capacities only.

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H.R. 1427, 109th Cong., 1st Sess. (2005) 26

H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. (1996) 7, 22

H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) 4, 27

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S. 2806, 108th Cong., 2d Sess. (2004) 25

S. Rep. No. 378, 97th Cong., 2d Sess. (1982) 5

S. Rep. No. 204, 102d Cong., 1st Sess. (1991) 3, 27

In the Supreme Court of the United States

No. 04-881

JAMES LOCKHART, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 376 F.3d 1027. The order of the district court (Pet. App. 8a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2004. A petition for rehearing was denied on November 4, 2004 (Pet. App. 9a). A petition for a writ of certiorari was filed on December 29, 2004. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions of the Higher Education Act, 20 U.S.C. 1091a, the Debt Collection Act, as amended by the Debt Collection Improvement Act, 31

U.S.C. 3716, and the Social Security Act, 42 U.S.C. 407, are set forth in an appendix to this brief. App., *infra*, 1a-3a.

STATEMENT

1. *Statutory Background*

a. The Student Loan Program

Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. 1071 *et seq.*, establishes a set of programs commonly known as the Guaranteed Student Loan (GSL) program.[1] The GSL program encourages lenders to make funds available to students who might not otherwise be able to obtain or afford commercial loans to finance the costs of post-secondary education. Under the GSL program, banks that loan money to students receive a guarantee from state or private non-profit organizations that loans will be repaid if borrowers default. 20 U.S.C. 1078(b)(1)(A) and (G). That guarantee is reinsured by the Department of Education under an insurance agreement. 20 U.S.C. 1078(c).

If a student loan borrower defaults on a loan, the state or private guaranty agency reimburses the lender and takes an assignment of the loan. 20 U.S.C. 1078(b)(1); 34 C.F.R. 682.406. The guaranty agency thereafter may request (usually within 45 days of paying the lender) that the Department of Education reimburse the guaranty agency under the insurance agreement. 20 U.S.C. 1078(c)(1)(A); 34 C.F.R. 682.404(a)(1),

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[1] In 1992, Congress renamed the GSL program the Federal Family Education Loan Program. Higher Education Amendments of 1992, Pub. L. No. 102-325, § 411(a)(1), 106 Stat. 510. Because the loans at issue in this case were issued before 1992, we refer to the program as the GSL program.

682.406(a)(9). The guaranty agency then must exercise "due diligence" to collect the debt. 20 U.S.C. 1078(c)(2)(A); 34 C.F.R. 682.410(b)(6) (setting forth collection effort requirements). If the guaranty agency is unable to collect the debt, the loan eventually is assigned to the Department of Education. 34 C.F.R. 682.409(a) and (c)(1).

Soon after the inception of the GSL program, the Department of Education faced the problem of student loan defaults. For instance, "defaults and delinquencies in federal student loan programs increased by more than three hundred percent between 1972 and 1976." *TI Fed. Credit Union* v. *DelBonis*, 72 F.3d 921, 936 (1st Cir. 1995). The problem of student loan defaults has only increased over time. At the end of Fiscal Year 2004, the Department of Education was owed $33.6 billion in delinquent student loan debt. Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fiscal Year 2004 Report to the Congress: U.S. Gov't Receivables and Debt Collection Activities of Federal Agencies* 6 (visited Aug. 29, 2005) <http://fms.treas.gov/news/reports/debt04.pdf> (*Fiscal Year 2004 Report*). Student loan defaults accordingly constitute a significant financial burden on the federal treasury. S. Rep. No. 204, 102d Cong., 1st Sess. 4-5 (1991); *Brannan* v. *United Student Aid Funds, Inc.*, 94 F.3d 1260, 1264 (9th Cir. 1996) (noting congressional concern about "significant losses to the U.S. Treasury" "due to the 'costs and occurrences of defaults in the program'") (quoting H.R. Rep. No. 383, 99th Cong., 1st Sess. 35 (1985)), cert. denied, 521 U.S. 1106 and 1111 (1997).[2]

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[2] Early problems emerged in the bankruptcy context, as some debtors, shortly after graduation, filed petitions for bankruptcy in order

The frequency and magnitude of student loan defaults reflects in part the widespread availability of federal educational assistance even to individuals who represent poor credit risks. The Department of Education generally offers financial assistance to any individual who attends an eligible educational institution and meets certain need-based criteria. 34 C.F.R. 668.32 (setting forth the general eligibility criteria for student loan assistance), 682.201(a) (GSL Program), 674.9 (Federal Perkins Loan Program), 685.200(a) (Federal Direct Loan Program). In financing federal student loans, the government does not require lenders to evaluate the credit history of the prospective student, nor does the government request any collateral as protection in the event of default. Federal educational loans to students are thus unique: "They are made without business considerations, without security, without cosigners, and rely[] for repayment solely on the debtor's future increased income resulting from the education." H.R. Rep. 595, 95th Cong., 1st Sess. 133 (1977); *In re Segal*, 57 F.3d 342, 348 (3d Cir. 1995) ("[Educational] loans are not based upon a borrower's proven credit-worthiness."); *In re Merchant*, 958 F.2d 738, 740 (6th Cir. 1992) ("[U]nlike commercial transactions * * * student loans are generally unsecured.").

b. Debt Collection By The Federal Government

Various statutes provide the Department of Education with mechanisms for collecting outstanding educa-

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to discharge their federal student loans. H.R. Rep. No. 595, 95th Cong., 1st Sess. 133 (1977); *In re Segal*, 57 F.3d 342, 348 (3d Cir. 1995). The Bankruptcy Code now bars discharge of student loans absent a showing of "undue hardship." 11 U.S.C. 523(a)(8).

tional debt. See, *e.g.*, 31 U.S.C. 3720A (tax refund offset); 5 U.S.C. 5514 (wage deduction for federal employees); 20 U.S.C. 1095a, 31 U.S.C. 3720D (wage garnishment for any employee); see also 11 U.S.C. 523(a)(8) (limiting student loan discharge in bankruptcy). The Department of Justice may also collect such outstanding debt by filing suit against a student loan holder. Lawsuits, however, are not an efficient means of collecting overdue student loans. See, *e.g.*, 137 Cong. Rec. 13,763 (1991) (It is "not cost-effective for the [government] to pursue * * * defaulted loans in small dollar amounts through the judicial process."); see also S. Rep. No. 378, 97th Cong., 2d Sess. 3 (1982) ("[T]he litigation process is sluggish and ineffective" for collecting debts owed to federal agencies.).

In 1982, Congress enacted the Debt Collection Act to authorize federal agencies, including the Department of Education, to collect outstanding debt by administrative offset. Pub. L. No. 97-365, § 10, 96 Stat. 1754. "'[A]dministrative offset' means withholding funds payable by the United States * * * to, or held by the United States for, a person to satisfy a claim." 31 U.S.C. 3701(a)(1). That authority is grounded in the need to avoid "the absurdity of making A pay B when B owes A." *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (quoting *Studley* v. *Boylston Nat'l Bank*, 229 U.S. 523, 528 (1913)). The Debt Collection Act contains a limitation provision, however, which provides that administrative offset is generally not available to collect a "claim * * * that has been outstanding for more than 10 years." 31 U.S.C. 3716(e)(1).

In 1991, Congress amended the Higher Education Act to abrogate all statutes of limitations that would otherwise be applicable to efforts to collect student

loans. Congress achieved that result in 20 U.S.C. 1091a(a), which provides:

> Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

20 U.S.C. 1091a(a)(2); Higher Education Technical Amendments of 1991, Pub. L. No. 102-26, § 3(a), 105 Stat. 124. Congress further expressed that "[i]t is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Accordingly, the Secretary of Education has determined that the Debt Collection Act's ten-year limitation period does not apply to the collection of delinquent student loan debt by administrative offset. See 20 U.S.C. 1091a(a)(2) ("no limitation shall terminate the period within which * * * an offset" may be taken by the Secretary "for the repayment" of student loans); *e.g.*, C.A. Appellants Supp. E.R. (SER) 3, at 35. The Department of the Treasury has concurred in that view. 67 Fed. Reg. 78,937 (2002) (observing that debts for "education loans" "may be collected by offset legally if more than ten years delinquent").

In 1996, Congress enacted the Debt Collection Improvement Act to improve the effectiveness of the administrative offset program under the Debt Collection

Act. Pub. L. No. 104-134, Tit. III, § 31001, 110 Stat. 1321-358. The amendments were designed "[t]o maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools." § 31001(b)(1), 110 Stat. 1321-358; H.R. Conf. Rep. No. 537, 104th Cong., 2d Sess. 370 (1996).

The Debt Collection Improvement Act streamlined and centralized the administrative offset program by authorizing the Department of the Treasury, which disburses federal benefits, to conduct administrative offsets on behalf of all federal agencies. Under the newly created Treasury Offset Program, any federal agency with a claim against a debtor, after notifying the debtor that his debt may be subject to administrative offset and giving him an opportunity to dispute the debt or make arrangements to pay it, certifies the debt to the Department of the Treasury. 31 U.S.C. 3716(a), (c)(1)(A), and (c)(6); 31 C.F.R. 901.3(b). If the debtor is entitled to receive payment from the federal government, the Treasury Department offsets those payments against the debts that the person owes to the United States. 31 C.F.R. 901.3; Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fact Sheet: FMS Debt Collection and the Debt Collection Improvement Act of 1996*, (last modified Mar. 5, 2001) <http://fms.treas.gov/news/factsheets/dcia.html> ("The [Treasury Offset Program] compares the names and taxpayer identifying numbers (TINs) of debtors with the names and TINs of recipients of federal payments. If there is a match, the federal payment is reduced, or 'offset,' to satisfy the overdue debt.").

The 1996 amendments to the Debt Collection Act also explicitly extended the offset program to encompass Social Security benefits. § 31001(d)(1), 110 Stat. 1321-

359. Section 207 of the Social Security Act, entitled Assignment of Benefits, establishes a general rule that no Social Security benefits "shall be subject to execution, levy, attachment, garnishment, or other legal processes." 42 U.S.C. 407(a). Section 207 further provides that "[n]o other provision of law * * * may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. 407(b). Prior to 1996, the Debt Collection Act did not expressly refer to Section 207 of the Social Security Act in authorizing administrative offset. The 1996 amendments revised the Act to state expressly that, "[n]otwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), * * * all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section." 31 U.S.C. 3716(c)(3)(A)(i).

The Debt Collection Improvement Act also added certain protections for recipients of Social Security benefits. Under the offset program, $9000 of each debtor's annual Social Security benefits is exempt from administrative offset. 31 U.S.C. 3716(c)(3)(A)(ii). Implementing regulations of the Department of the Treasury further limit the amount subject to offset to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15 percent of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. 31 C.F.R. 285.4(e).

Following the 1996 amendments, the Department of the Treasury made numerous modifications to its computer systems, regulations, and administrative procedures in order to facilitate the new centralized adminis-

trative offset program. The Treasury Department began implementing the administrative offset program for Social Security benefits in May 2001 with full implementation in 2002. Financial Mgmt. Serv., U.S. Dep't of the Treasury, *Fact Sheet: Delinquent Debt Collection, Fiscal Year 2004, Major Accomplishments* (visited Aug. 29, 2005) <http://fms.treas.gov/news/factsheets/ delinquent_debtcollection.html> ("Offset of Social Security benefit payments, which began in May 2001, was implemented in stages to ensure that payment recipients received appropriate notices of potential offsets, as well as the opportunity to take action to avoid offsets.").

2. ***Factual Background***

Between 1984 and 1989, four financial institutions issued nine GSLs to petitioner. SER 1, at 45. Petitioner failed to repay most of his obligations under those loans, and, by March 2002, his debts exceeded $87,000. SER 2, at 5, 16. The Department of Education advises us that, according to its records, the affected guaranty agencies received federal reinsurance for petitioner's delinquent debts between 1991 and 1996. The guaranty agencies made numerous attempts to contact petitioner and to collect on the defaulted loans. After those efforts proved unsuccessful, the guaranty agencies, between 1998 and 2001, assigned each loan to the Department.

The Department of Education also informs us that on August 22, 1999, September 14, 2001, and August 19, 2002, the Department notified petitioner by letter that his student loan obligations were subject to collection by administrative offset. The Department further notified him that he had certain rights to object to administrative offset and that he could avoid offset by making vol-

untary arrangements to repay the debts. SER 1, at 44-46 (Aug. 19, 2002 notice).

In February 2002, petitioner contacted the Department of Education, asserting in part that the collection of his student loans by administrative offset was time-barred. SER 3, at 17-24. The Department responded on March 6, 2002, explaining that the Higher Education Act had abrogated all statutes of limitations on the collection of student loans. *Id.* at 35. The Department of the Treasury advises us that, in May 2002, it began withholding $93 per month from petitioner's Social Security payment by way of administrative offset. When petitioner started to receive additional Social Security benefits, the government correspondingly increased the offset, first to $136.50 per month on March 3, 2003; then to $139.35 on January 2, 2004; and, most recently, to $143.10 per month on January 3, 2005. The Department of Education also advises that as of August 2005, the government has collected on petitioner's loans by Social Security offsets a total of $4327.65 and that the total remaining outstanding debt on petitioner's loans, including interest and administrative fees, is $77,166.03.

3. ***Proceedings Below***

In March 2002, petitioner, proceeding pro se, filed a complaint in federal district court, objecting to the offset of his Social Security benefits. SER 2, at 1-23. The complaint appeared to arise under the Bankruptcy Code and alleged that petitioner had "committed acts of bankruptcy and thereby 'filed' for bankruptcy." *Id.* at 15. The complaint stated that the government's collection efforts were subject to an automatic stay, *id.* at 15, 17, and urged the district court to impose civil sanctions on the government and/or to force the parties to enter into

a settlement agreement. *Id.* at 19-20. The complaint also stated that the government's attempt to "garnish debtor's [Social Security] payments by administrative offset" was "time barred" under 31 U.S.C. 3716(e)(1) because "more than 10 years have passed since debtor's education loans became outstanding." SER 2, at 14.

The district court, unable to discern the legal theory in petitioner's complaint, directed him to show cause why the complaint should not be dismissed for failure to state a claim. SER 10, at 1. Petitioner filed a response ten days later, but the district court was still unable to identify a viable federal claim. Pet. App. 8a. The court thereafter dismissed the complaint. *Ibid.*

On appeal, after briefing in which petitioner appeared pro se, the court of appeals ordered the appointment of counsel to represent petitioner. The parties subsequently filed supplemental briefs that focused on whether the ten-year statute of limitations in the Debt Collection Act applied to the collection of student loans by Social Security offset.[3]

The court of appeals held that petitioner's complaint, liberally construed, sufficiently raised the argument that the administrative offset of petitioner's Social Security benefits was time-barred. Pet. App. 2a-3a. The court of appeals then rejected petitioner's claim on the

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[3] The government assumed for purposes of the appeal that petitioner's delinquent student loans were over ten years old. C.A. Supp. Br. 11 n.4. As explained in the United States' response to the petition for a writ of certiorari (at 14-16), the government has since determined that the Department of Education had a claim beginning in 1991 when it paid reinsurance to a guaranty agency with respect to one of petitioner's loans. Accordingly, at the time the complaint was filed in 2002, the collection of at least one of petitioner's loans would have been barred if a ten-year limitations period applied.

merits. The court of appeals observed that the Higher Education Act, as amended in 1991 through the enactment of Section 1091a(a), "overr[ode]" the Debt Collection Act's ten-year statute of limitations "as applied to student loans." *Id.* at 6a. The court further stated that, "in 1996, Congress explicitly authorized the offset of Social Security benefits." *Ibid.* The statutory scheme thus made clear that the ten-year limitation period in the Debt Collection Act does not apply to the collection of student loans by Social Security offset. *Ibid.*

SUMMARY OF ARGUMENT

Social Security offsets to reduce delinquent student loan debt, like all other efforts to collect federal student loans, are not subject to any statutes of limitations.

A. The Higher Education Act in Section 1091a(a) abrogates all statutes of limitations for the collection of student loan debt. That provision states: "Notwithstanding any other provision of statute, * * * no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken" to collect on a federal education loan. 20 U.S.C. 1091a(a)(2). Congress has thereby exempted student loan collection from any limitations period, including the ten-year limit specified in the Debt Collection Act, 31 U.S.C. 3716(e), for the recovery of debt by administrative offset. That conclusion is confirmed by all three federal agencies charged with administration of the relevant enactments, and that reasonable judgment is entitled to deference.

B. Petitioner erroneously relies on the fact that Congress passed Section 1091a(a) in 1991, whereas Congress did not expressly make Social Security benefits subject to offset until the 1996 amendments to the Debt

Collection Act. That sequence of events provides no basis for ignoring the plain terms of Section 1091a(a), which expressly abrogates any statutes of limitations that would otherwise apply to a student loan debt for which repayment is sought by the Department of Education. In any event, the chronology demonstrates that when Congress expressly made Social Security benefits subject to offset in 1996, Congress had already, when it passed Section 1091a(a) in 1991, manifested its clear intent that the Department of Education not be subject to time restrictions in its collection of delinquent student loans.

C. Petitioner also seeks to carve out a special rule for Social Security benefits by relying on Section 207 of the Social Security Act, which requires a statute to make an "express reference" before Social Security benefits may be subject to "legal process." 42 U.S.C. 407(a) and (b). Congress made an "express reference" to Section 207 of the Social Security Act, however, in the 1996 amendments to the Debt Collection Act. That reference is contained in 31 U.S.C. 3716(c)(3)(A)(i), which provides that Social Security benefits "shall be subject to offset" "[n]otwithstanding * * * section[] 207 * * * of the Social Security Act."

Congress was not required to make a further "express reference" in Section 1091a(a) of the Higher Education Act, because that Act does not purport to modify any part of the Social Security Act. Indeed, Section 1091a(a) does not authorize offset or establish any legal process for the collection of student loan debt. Rather, the Secretary of Education's authorization to offset Social Security benefits is set forth in the Debt Collection Act, which, as mentioned, contains an "express reference" to Section 207.

D. The Department of Education's exemption from all statutes of limitations for federal student loan collection is necessary to address the difficult and substantial problem of outstanding student loan defaults, which to date exceed $33 billion. The Department of Education finances student loans without regard to the credit-worthiness of the recipient, and many recipients unfortunately fail to pay their obligations to the United States. The Department of Education relies on a number of statutory collection mechanisms to recover that outstanding debt from individuals who for many years (and even decades) have failed to repay their student loan obligations to the United States. Social Security offsets to collect loans over ten years old constitute an integral part of the Department's collection efforts.

E. Adequate safeguards protect Social Security beneficiaries from the financial burden of offsets to pay student loan debts. Debtors are given notice and opportunity to contest the debt or to enter into a written agreement to repay the debt. There are also statutory and regulatory limits on the amount of offset that may occur, and an individual may obtain an administrative discharge of the debt if he is unable to work or earn money because of a medical condition of indefinite duration.

ARGUMENT

NO STATUTE OF LIMITATIONS APPLIES TO THE COLLECTION OF STUDENT LOAN DEBT BY ADMINISTRATIVE OFFSET OF SOCIAL SECURITY BENEFITS

Congress has authorized the Department of Education to collect defaulted federal student loans without regard to any limitations periods. There is no basis for a different result when the Department of Education

seeks to collect student loan debt by offsetting a debtor's Social Security benefits.

A. The Higher Education Act's Abrogation Of All Statutes Of Limitations Overrides The Debt Collection Act's Ten-Year Limitation Period

The Debt Collection Act authorizes federal agencies, including the Department of Education, to collect outstanding debt by administrative offset. 31 U.S.C. 3716. Thus, if a debtor is entitled to receive federal payments, those payments can be offset against any debt that the individual owes to a federal agency. 31 U.S.C. 3716(a) and (c). Moreover, since 1996, Social Security benefits unquestionably have been a source of federal monies available for administrative offset. The Debt Collection Act, as amended by the Debt Collection Improvement Act of 1996, provides in 31 U.S.C. 3716(c)(3)(A)(i) that, "[n]otwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), * * * all payments due an individual under * * * the Social Security Act * * * shall be subject to offset" under the Debt Collection Act.

The dispute in this case concerns the time period during which delinquent student loans may be collected by administrative offset of Social Security benefits. As mentioned, the Debt Collection Act in 31 U.S.C. 3716(e)(1) contains a ten-year statute of limitations that is generally applicable to debt collection by administrative offset. Section 1091a(a) of the Higher Education Act, however, expressly overrides all statutes of limitations that would otherwise apply to the collection of student loan debts, including by administrative offset. Section 1091a(a) thus states that, "*[n]otwithstanding any other provision of [law], no limitation shall terminate*

*the period within which * * * an offset*" can be taken by the government "for the repayment of" educational loans. 20 U.S.C. 1091a(a)(2) (emphasis added). Section 1091a(a) thus unambiguously bars application of a ten-year limitation that would otherwise apply under the Debt Collection Act, 31 U.S.C. 3716(e)(1). Accordingly, the court of appeals correctly held that there is no time bar to the offset of petitioner's Social Security benefits in order to collect petitioner's defaulted loans. Pet. App. 5a-6a.

The above conclusion is also the consistent view of all three federal agencies charged with administration of the relevant statutes. Thus, the Department of the Treasury and Department of Education have used the Treasury Offset Program to offset Social Security benefits to collect student loan debt, regardless of the age of the debt. See pp. 6, 10, *supra*. The Social Security Administration agrees that the Social Security Act does not bar the offset of Social Security benefits to satisfy student loan debt that has been outstanding more than ten years. That uniform view of all three relevant agencies is entitled to considerable weight. See, *e.g.*, *Bragdon* v. *Abbott*, 524 U.S. 624, 642 (1998) ("[T]he well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.'") (quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)); see also *Washington State Dep't of Soc. & Health Servs.* v. *Keffeler*, 537 U.S. 371, 383 n. 6 (2003).

B. The Higher Education Act's Abrogation Of All Statutes Of Limitations Is Fully Applicable To The Debt Collection Act As Amended In 1996

1. Notwithstanding the clarity with which Congress abrogated all limitations periods that would otherwise apply to the Secretary's efforts to collect delinquent student loans, petitioner argues (Pet. Br. 14, 16, 18) that the "chronology" of the relevant enactments demonstrates that Section 1091a(a) of the Higher Education Act does not apply to the offset of Social Security benefits. He observes that Section 1091a(a) was adopted in 1991, while Social Security benefits were not expressly subject to offset until Congress amended the Debt Collection Act in 1996. From that sequence of events, he concludes that Congress in 1991 could not have intended that Section 1091a(a) would apply to administrative offsets of Social Security benefits because such benefits were not subject to offset until 1996. Pet. Br. 16-20. In a similar vein, petitioner argues that Section 1091a(a) applies to only "*existing* limitations" and not to "future enactments," Pet. Br. 19, and therefore Section 1091a(a) cannot "spring forward" to override limitations periods that are relevant to an express post-1991 enactment authorization to offset Social Security benefits, Pet. Br. 22.

The unqualified text of the Higher Education Act and the conventional methods of interpreting the United States Code, however, refute those contentions. Section 1091a(a) speaks in sweeping terms: "*Notwithstanding any other provision of statute, regulation, or administrative limitation*, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of" student

loans. 20 U.S.C. 1091a(a)(2) (emphasis added). The phrase "[n]otwithstanding any other provision of [law]" signals Congress's unmistakable intent to trump *any* limitation period, regardless of the date of the authorization for the Department to collect student loan debt. As this Court has "noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." *Cisneros* v. *Alpine Ridge Group*, 508 U.S. 10, 18 (1993); see *Illinois Nat'l Guard* v. *FLRA*, 854 F.2d 1396, 1403 (D.C. Cir. 1988) (concluding with respect to statute containing "[n]otwithstanding any other provision of law" clause that "[a] clearer statement is difficult to imagine" and that "the preemptive language is powerful evidence that Congress did not intend any other, more general, legislation, whenever enacted, to qualify" the statute) (quoting *New Jersey Air Nat'l Guard* v. *FLRA*, 677 F.2d 276, 283 (3d Cir. 1982)).

The statutory language of Section 1091a(a) conclusively establishes Congress's intent for the provision to operate with respect to the collection of *any* student loan debt, by *any* means. Petitioner thus errs in relying on the fact that one of the primary motives for enacting Section 1091a(a) was an intent to overrule a lower court decision limiting the period during which the Department could offset tax refunds. Pet. Br. 8, 19 (citing 137 Cong. Rec. 6458 (1991) (statement of Rep. Ford)). Legislation "often [goes] beyond the principal evil [at which the statute was aimed] to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore*

Servs., Inc., 523 U.S. 75, 79 (1998); accord *H.J. Inc.* v. *Northwestern Bell Tel. Co.*, 492 U.S. 229, 248 (1989).

Moreover, the fact that a statute "can be 'applied in situations not expressly anticipated by Congress'" is "irrelevant" "in the context of an unambiguous statutory text." *Pennsylvania Dep't of Corrs.* v. *Yesky*, 524 U.S. 206, 212 (1998) (quoting *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 499 (1985)); accord *Union Bank* v. *Wolas*, 502 U.S. 151, 158 (1991) ("The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning."). As stated, the clear text of Section 1091a(a) abolishes any limitations period, regardless of the nature of the collection mechanism, and regardless of the date of passage of the law that enables that collection mechanism.

Section 1091a(a)'s broad reach to any collection mechanism, and to any statutes of limitations, is also confirmed by the unmistakable expression of congressional purpose "to ensure that obligations to repay loans and grant overpayments are enforced without regard to *any* Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1) (emphasis added). Congress's repeated indication that Section 1091a(a) would override "any" statutes of limitations expresses the legislature's intent that the provision would be given its natural "expansive meaning." *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997).

Petitioner's construction of Section 1091a(a), moreover, unjustifiably would freeze that provision as of 1991, and impose the bizarre and burdensome requirement that Congress must reenact Section 1091a(a) any time Congress enacts or modifies a new limitations pe-

riod applicable to any method of debt collection. That approach is wholly inconsistent with the basic understanding that a statute covers applications that fall within the statute's plain text even if not contemplated by Congress at the time of passage, see p. 19, *supra*, and that Congress legislates with presumed knowledge of the then-existent Code. See *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 184-185 (1988) ("We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts."). For instance, were Congress to amend the Debt Collection Act to provide a new limitations period of 15 years in which all federal agencies could collect debt by administrative offset, petitioner's view presumably would prevent Section 1091a(a) from "spring[ing] forward" (Pet. Br. 22) and would require the Department to be bound by the new 15-year statute of limitations. That counter-intuitive result would defeat Congress's obvious intent to remove any time restrictions for the collection of student loan debt.

In any event, even if the chronology of the enactments at issue in this case were relevant, the sequence would support applying the plain terms of Section 1091a(a). Petitioner asserts (Pet. Br. 21) that the 1996 amendment included "its own provision" "prohibit[ing]" use of the offset mechanism to collect debts after ten years, and suggests that this purportedly subsequent enactment should trump the 1991 enactment of Section 1091a(a). But petitioner errs in his description of the 1996 amendment. That amendment did not enact into law "its own provision" imposing a reinvigorated ten-year limitation period; rather, it merely redesignated the pre-existing subsection (previously codified as 31 U.S.C. 3716(c)(1) (1994)) that contained the language

imposing the limitation period, without restating or reenacting the operative statutory language in any way. § 31001(d)(2)(C), 110 Stat. 1321-359 ("redesignating subsection (c) as subsection (e)").

Petitioner's chronology argument thus serves only to confirm the implausibility of his interpretation. When Congress in 1996 explicitly made Social Security benefits subject to offset, Congress was necessarily aware that Section 1091a(a) already had rendered the Secretary exempt from the Debt Collection Act's ten-year limitation period. See *Goodyear Atomic Corp*, *supra*. The Debt Collection Act's ten-year time limit pre-dated Section 1091a(a)'s abrogation of statutes of limitations, and Congress therefore must have intended that the Department of Education would not be bound by the preexisting ten-year limit in conducting any administrative offsets to collect student loan debt.

2. Petitioner also errs in suggesting (Pet. Br. 15, 23) that application of the plain terms of Section 1091a(a) violates the canon that amendments to statutes must be read in light of the original enactment that remains unchanged. The ten-year limit under Section 3716(e)(1), of course, generally applies to Social Security offsets used to collect most types of debts, just as the ten-year limit generally applies to offsets of other types of federal payments subject to offset under the program. But nothing in the 1996 amendments to the Debt Collection Act expressly repealed Section 1091a(a) as it relates to the Department of Education's collection of student loan debt.

Nor is there any basis for concluding that the 1996 amendment worked an implied repeal of Section 1091a(a). Petitioner's argument violates "the cardinal rule * * * that repeals by implication are not favored."

Cook County v. *United States ex rel. Chandler*, 538 U.S. 119, 132 (2003) (internal quotation marks omitted). Petitioner points to no evidence that Congress, in enacting the 1996 amendment, considered and intended to override the plain language of Section 1091a(a) and its "notwithstanding any other [law]" clause. Petitioner thus cannot supply "the overwhelming evidence needed to establish repeal by implication," *J.E.M. AG Supply, Inc.* v. *Pioneer Hi-Bred Int'l*, 534 U.S. 124, 137 (2001).

Moreover, adoption of petitioner's contention, *i.e.*, that Section 1091a(a)(1) applies only to pre-existing legislation and therefore has no force with respect to the subsequently enacted new Section 3716(e)(1), would nullify Section 1091a(a) in its entirety with respect to *all* administrative offsets under the Treasury Offset Program, not just Social Security offsets. Petitioner freely admits as much; he asserts that "Congress meant the 10-year bar to apply to *all* offsets." Pet. Br. 15. Such a result would bring about a radical change in the Department's collection of student loan debt and would prevent the government from collecting the approximately $5.7 billion in student loan debt that has been outstanding longer than ten years. See p. 28, *infra*.

The 1996 amendments to the Debt Collection Act, which were passed to "maximize collections of delinquent debts owed to the Government," H. R. Conf. Rep. No. 537, 104th Cong., 2d Sess. 370, cannot be read to limit the plain terms of Section 1091a(a) or to defeat the manifest purpose of Congress to permit the Secretary to collect defaulted student loan debt by all available means without regard to any limitation periods. As petitioner observes (Pet. Br. 9, 21), Congress in enacting the Debt Collection Improvement Act "carefully reviewed and overhauled the Debt Collection Act." That observa-

tion merely underscores that, if Congress had intended to reimpose the ten-year statute of limitations upon the Department of Education, it would have done so explicitly.

C. Section 207 Of the Social Security Act Does Not Foreclose Social Security Offsets For Student Loan Debt Outstanding For Over Ten Years

1. Petitioner also relies on Section 207 of the Social Security Act, 42 U.S.C. 407. Pet. Br. 15, 17-18. Under that provision, no Social Security benefits "shall be subject to execution, levy, attachment, garnishment, or other legal process," and "[no] other provision of law * * * may be construed to limit, supersede, or otherwise modify [Section 207] except to the extent that it does so by express reference to this section." 42 U.S.C. 407(a) and (b). As discussed, however, the Debt Collection Act itself contains an express reference to Section 207, by explicitly providing that Social Security benefits are *subject to offset* notwithstanding Section 207 of the Social Security Act. See 31 U.S.C. 3716(c)(3)(A)(i) ("Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act * * *) all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section."). As the court of appeals correctly concluded, that provision "explicitly removes any protection under [Section 207] that Social Security benefits may have had from offset, and thus allows the government to reach [petitioner's] benefit in order to collect on his debt." Pet. App. 6a.[4]

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[4] The court below discussed, but did not decide, the issue whether the Treasury Offset Program is a form of "legal process" within the meaning of Section 207. Pet. App. 4a-5a. This Court held in *Washing-*

No additional reference to Section 207 is required in Section 1091a(a) before that provision can be applied according to its unambiguous text. Section 1091a(a) merely abrogates otherwise applicable statutes of limitations and is not the provision that authorizes administrative offset. That authorization is instead provided by the Debt Collection Act. 31 U.S.C. 3716(a) ("After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency *may collect the claim by administrative offset.*") (emphasis added); 31 U.S.C. 3716(c)(3)(A)(i) ("[A]ll payments due to an individual under * * * the Social Security Act * * * *shall be subject to offset under this section.*") (emphasis added). Thus, the Debt Collection Act makes clear that, notwithstanding Section 207, Social Security benefits are subject to offset to satisfy a claim by the federal government. *Ibid.* There is no further requirement that modifications to the limitation period otherwise applicable to expressly authorized offsets themselves include an additional cross-reference to Section 207.

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ton State Department of Social & Health Services v. *Keffeler*, 537 U.S. 371 (2003), that Section 207 requires, at a minimum, "utilization of some judicial or quasi-judicial mechanism, though not necessarily an elaborate one, by which control over property passes from one person to another in order to discharge or secure discharge of an allegedly existing or anticipated liability." *Id.* at 385 (emphases added). The Treasury Offset Program contains a variety of procedural guarantees to debtors, 31 U.S.C. 3716(a), and, for debts owed to the United States, operates to withhold money in the possession of the Department of the Treasury due to an individual to offset a debt to the United States. 31 U.S.C. 3701(a)(1). In any event, because the Debt Collection Act contains an express reference to Section 207, this Court need not decide whether Social Security offsets to repay a debt to the United States are a form of "legal process."

2. Petitioner also errs in relying on an un-enacted amendment to Section 3716(e) that was proposed by the government in September 2004 and would have provided that, notwithstanding Section 207 of the Social Security Act, no time limitation would apply to any administrative offsets under the Debt Collection Act. Pet. Br. 10-11, 20 (citing H.R. 5025, 108th Cong., 2d Sess. § 642 (2004); S. 2806, 108th Cong., 2d Sess. § 642 (2004)). That Congress in 2004 did not enact that legislative proposal reveals nothing whatsoever about the intent of earlier Congresses in passing the relevant enactments in this case, a point petitioner correctly concedes (Br. 20). See, *e.g.*, *United States* v. *Craft*, 535 U.S. 274, 287 (2002) ("[F]ailed legislative proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'") (quoting *Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 650 (1990)); accord *Central Bank of Denver, N.A.* v. *First Interstate Bank*, 511 U.S. 164, 187 (1994).

In any event, that un-enacted bill does not, as asserted by petitioner (Br. 20), even support an inference that Congress in 2004 was opposed to the use of administrative offset of Social Security benefits to collect delinquent student loans after more than ten years. Rather, the bill would have removed the ten-year limit for administrative offset with respect to the collection of *all* debt owed to *all* federal agencies, and with respect to *all* federal payments subject to offset, not just Social Security payments. Even assuming *arguendo* that any meaningful inference could be drawn from mere legislative inaction, Congress's failure to enact that more sweeping regime in no way suggests that the 2004 Congress would have disagreed with Section 1091a(a)'s express abrogation of statutes of limitations with respect

to delinquent *student loans* "[n]otwithstanding any other provision of [law]." 20 U.S.C. 1091a(a)(2).

Similarly, the government's inclusion of an express reference to Section 207 in an un-enacted bill does not demonstrate that an express reference to Section 207 is required to override the Debt Collection Act's ten-year limit. The reference to Section 207 in the government's proposed bill would have served the purpose of overruling some lower court decisions which had held that Section 207's express reference requirement precluded the Department from collecting delinquent student loan debt by Social Security offsets. See *Lee* v. *Paige*, 276 F. Supp. 2d 980 (W.D. Mo. 2003), aff'd, 376 F.3d 1179 (8th Cir. 2004), petition for cert. pending, No. 04-1139 (filed Feb. 25, 2005); *Guillermety* v. *Secretary of Educ.*, 241 F. Supp. 2d 727 (E.D. Mich. 2002).

Moreover, a current bill is pending before Congress that would similarly eliminate the ten-year limit for any administrative offset but would do so without any express reference to Section 207. That bill would amend Section 3716(e) to read that "[t]his section * * * applies to a claim under this subchapter regardless of the period it has been outstanding." H.R. 1427, 109th Cong., 1st Sess. (2005). Surely such a provision, if enacted, would not be void because it fails to reference Section 207. Indeed, Congress could eliminate the ten-year limit simply by repealing Section 3716(e)(1) altogether without having to make a express reference to Section 207. The same conclusion is true of Section 1091a(a), because, as stated, that provision unambiguously overrides the ten-year limit for the collection of student loan debt.

D. A Ten-Year Limit On Social Security Offsets Would Impair The Department of Education's Ability To Collect Seriously Delinquent Student Loans

1. The Department of Education's statutory exemption from all statutes of limitations under Section 1091a(a) is essential to the agency's ability to combat the unique challenges posed by collection of delinquent student loan debt. As discussed *supra*, p. 4, the Department of Education generally finances student loans for any individual who wishes to attend an institution of higher education without regard to the credit worthiness of the individual. The government is thereby able to maximize educational opportunities, but it also takes a substantial risk that individual borrowers will fail to fulfill their financial obligations. Indeed, over $33 billion of delinquent student loan debt is outstanding. *Fiscal Year 2004 Report*, *supra*, at 6. Student loan defaults thus impose a significant burden on the federal treasury. See, *e.g.*, S. Rep. No. 204, 102d Cong., 1st Sess. 4-5 (1991); H.R. Rep. No. 595, 95th Cong., 1st Sess. 537 (1977) (statement of Rep. Ertel).

The abrogation of all statutes of limitations in Section 1091a(a) for all forms of student loan collection efforts, including Social Security offsets, protects the public fisc and helps to ensure the viability of the student loan program. An unlimited time period in which to collect delinquent debt allows the Department of Education to recoup a greater portion of the vast sums owed to the United States by delinquent student loan borrowers. Such a time period also encourages borrowers to repay their obligations in the first place, by eliminating any incentive to evade student loan obligations for a number of years on the expectation that the time period during which the Department of Education may recover stu-

dent loan debt will expire. Section 1091a(a) thus works in tandem with the liberal lending policy of the federal student loan program. Educational loans are freely given, but the obligation to repay the loans does not expire with the passage of time.

2. A bar on administrative offset of Social Security benefits for delinquent student loans that are more than ten years old would significantly undermine the government's collection efforts. Social Security offsets are often the last remaining collection tool available to the government in such cases. The Department of Education resorts to administrative offset only after the lender, the guarantee agency, and the Department itself have given a debtor multiple opportunities to repay his debt by other means, but the debtor has evaded all such collection efforts—typically for many years or even decades.

The vast majority of recipients of federal student loans receive such financial assistance under the Higher Education Act when they are young adults. Many such student loan debtors will not begin to receive Social Security benefits until they reach retirement age, which may occur many years after the Department of Education is first entitled to collect on defaulted student loan debts. The Department advises us that, as of August 2005, the Secretary had certified to the Department of the Treasury approximately $7.4 billion in delinquent student loan debt, and that approximately $5.7 billion reflected student loan debt over ten years old. For individuals having student loan debt who do not receive Social Security benefits until ten years after the Secretary is entitled to collect on the loans, a ten-year limitation period would deprive the Department of Education of the most efficient (and, in many instances, the only)

means of collecting delinquent debt to the United States.[5]

For instance, application of a ten-year statute of limitations for Social Security offsets would render the offset program a nullity with respect to debtors who default on GSL loans before the debtor turns 55 but who do not receive Social Security retirement benefits until they reach full retirement age, which ranges from age 65 to age 67. Http://www.ssa.gov/retirechartred.htm; see also Pet. Br. 11 ("Following his sixty-fifth birthday in July 2003, Mr. Lockhart's period of disability ended, and he began receiving old-age benefits."). When the debtor defaults on a GSL, the lender invokes the loan guaranty and is paid by the guarantor. In turn, the guaranty agency (typically within 45 days of paying the lender) seeks reinsurance from the Department of Education. As soon as the Department of Education pays the reinsurance, the Department becomes entitled to collect on the loan by administrative offset. 31 U.S.C. 3716(c)(6); 34 C.F.R. 682.410(b)(6)(ii). Accordingly, for debtors who default before age 55, the debt generally will have been outstanding for more than ten years before the government is able to recover the debt through offset of Social Security retirement benefits. Not surprisingly, that category represents the vast majority of student loan borrowers who default. The Department of Education advises that approximately 90% of all debts for which it paid reinsurance claims during Fiscal Years 2002-2004

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[5] Approximately an additional $26 billion in outstanding delinquent student loan has not yet been certified to the Department of the Treasury for administrative offset, generally because either the debtor has entered into an agreement to repay the debt, 31 U.S.C. 3716(a)(4), or the debtor is in bankruptcy and an automatic stay is in effect, 11 U.S.C. 362.

were owed by a debtor whose age was under 55. A lengthy collection period is therefore critical to ensure that Social Security offsets remain an effective collection tool.

3. Application of a ten-year limitation period would also harm the Department of Education's collection efforts with respect to individuals, such as petitioner, who begin receiving Social Security disability benefits before reaching retirement age. The Debt Collection Act and implementing regulations strictly limit the amount of Social Security benefits that are subject to offset. 31 U.S.C. 3716(c)(3)(A)(ii); 31 C.F.R. 285.4(e). It therefore could take well beyond ten years to collect many delinquent student loan obligations through the offset mechanism. For example, in the case of petitioner, even after three years of offsets, the Department has been able to collect only approximately $90-140 per month—for a total of approximately $4000—whereas petitioner's outstanding debt currently exceeds $75,000. The amount of the offset reflects a judgment that the offset should still leave the recipient with substantial benefits in many situations, including petitioner's. See p. 31, *infra*. A lengthy collection period therefore serves Congress's overriding goal in passing Section 1091a(a) to maximize the collection of delinquent student loans, while allowing the offsets to be extended over many years to ensure that significant benefits are still received.

E. Adequate Safeguards Protect Social Security Beneficiaries

Application of Section 1091a(a) according to its plain terms does not unduly deprive individuals of their Social Security benefits. As discussed, offsets typically occur only because the debtor has evaded all other attempts at

collection. Moreover, the Debt Collection Act contains a number of "safeguards" to protect individuals whose benefits may be the "sole or major source of income for the debtor." 142 Cong. Rec. 9082 (1996). As discussed, the statute and governing regulations impose significant caps on the amount of Social Security offsets that can occur. See p. 8, *supra*. Thus, the Department of the Treasury advises that when the government began withholding a portion of petitioner's Social Security benefits, it withheld $93 per month, out of $874 per month that petitioner was receiving in Social Security benefits.

The Debt Collection Act also requires the Department to provide debtors with adequate notice of the claim, an opportunity to inspect and copy the agency's records with respect to the claim, an opportunity for review within the agency with respect to the claim, and an opportunity to enter into a written agreement to settle the claim. 31 U.S.C. 3716(a)(1)-(4); see also 20 U.S.C. 1078-6(a)(1)(A) (requiring Department to offer defaulters the opportunity to repay loans under "reasonable and affordable" installment terms "based upon the borrower's total financial circumstances"); 20 U.S.C. 1078(m) (providing for refinancing of loans under "income contingent" repayment terms). There is no dispute in this case that petitioner has defaulted on his loan obligations; that he was given adequate procedures before offsets began; and that he was given the opportunity to repay his debt.

Moreover, the Department of Education's regulations permit administrative discharge upon a showing of "total and permanent disability." 34 C.F.R. 682.402(c) (GSL program), 685.212(b) (Direct Loans), 674.61(b) (Perkins Loans). Under the regulations, an individual is totally and permanently disabled if he "is unable to work

and earn money because of an injury or illness that is expected to continue indefinitely or result in death." 34 C.F.R. 682.200. Accordingly, the Department of Education has reasonably determined that, absent a showing that the individual will not be able to earn income because of his medical condition, the individual is expected to repay his debt to the student loan program. 65 Fed. Reg. 65,683 (2000). The Department of Education's records do not reflect that petitioner has ever sought to avail himself of the agency's regulations to discharge his debt on account of a disability. See also Pet. C.A. Br. App. R-1 (offset notice to petitioner in which he left blank a space to object to offset on grounds of a disability but in which he objected to offset on other grounds).

Finally, petitioner errs in suggesting that offsets of his benefits would violate the "safeguards" mentioned by the conferees in amending the Debt Collection Act to make Social Security benefits subject to offset. Pet. Br. 10. The only safeguards mentioned by the conferees were "*regulatory* safeguards" to limit the amount of benefits even further than the $9000 statutory annual exemption and to consider exemptions for exceptional hardships. 142 Cong. Rec. 9719 (1996) (emphasis added); *id.* at 9082 (emphasis added). Nothing in the conference report refers to the ten-year period, much less suggests that is one of the contemplated "safeguard[s]." And nothing in the legislative history of the 1996 amendments to the Debt Collection Act suggests that Congress did not intend the plain terms of the Higher Education Act to apply when Social Security benefits are offset in order to collect delinquent student loans.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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SEPTEMBER 2005

APPENDIX

1. Section 1091a, of Title 20, U.S.C., provides, in relevant part:

§ 1091a. Statute of Limitations, and State court judgments

(a) In general

(1) It is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced.

(2) Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

2. Section 3716 of Title 31, U.S.C., provides in relevant part:

§ 3716 Administrative offset

(a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the

agency may collect by administrative offset only after giving the debtor—

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

* * * * *

(c)(3)(A)(i) Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act (42 U.S.C. 407 * * *), except as provided in clause (ii), all payments due to an individual under * * * the Social Security Act * * * shall be subject to offset under this section.

(ii) An amount of $9,000 which a debtor may receive under Federal benefit programs cited under clause (i) within a 12-month period shall be exempt from offset under this subsection. * * *

* * * * *

(e) This section does not apply—

(1) to a claim under this subchapter that has been outstanding for more than 10 years; or

(2) when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved.

3. Section 407 of Title 42, U.S.C., provides in relevant part:

> (a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.
>
> (b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

* * * * *

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No. 04-881

IN THE
Supreme Court of the United States

JAMES LOCKHART,
Petitioner,

v.

UNITED STATES, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

In arguing that it has authority to collect student loan debt by offsetting social security benefits regardless of the age of the debt, the government makes three basic points: (1) the "notwithstanding" clause of the Higher Education Technical Amendments of 1991 (HETA), 20 U.S.C. § 1091a(a)(2), revokes later-enacted legislation regardless of the purpose and history of that legislation; (2) the "express reference" to the Social Security Act's anti-attachment provision contained in the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. § 3716(c)(3)(A)(i), was sufficient to authorize the offset that the government seeks here, even though the DCIA contains a 10-year bar on offset; and (3) the fiscal impact on the government of delinquent student loan debt is relevant to the question presented here. We rebut each argument in turn.

A. HETA's "Notwithstanding" Clause Does Not Apply to the Offset of Social Security Benefits as Authorized by the DCIA and, Thus, Does Not Override the DCIA's 10-Year Bar in this Case.

1. The dispute in this case centers on the breadth of HETA, which abrogates limitations periods on most means of collecting federally insured student loans "notwithstanding any other provision of statute, regulation, or administrative limitation." 20 U.S.C. § 1091a(a)(2). The government maintains that this language affects *subsequent* legislation, just as forcefully as it does legislation that existed at the time of HETA's enactment in 1991. As explained in our opening brief, in light of Congress's *subsequent* overhaul of the Debt Collection Act in 1996, which both reenacted the Act's 10-year bar on collection, and, for the first time, extended the Act to cover the offset of social security benefits, section 1091a(a)(2) does not override operation of the 10-year bar. Simply put,

because the social security offset authority was enacted subject to a requirement that it could not be used to collect debt outstanding for more than 10 years, the "notwithstanding" language of section 1091a(a)(2) does not trump that protection.

2. As an initial matter, the government's plea for deference should be rejected.[1] The government maintains that its litigation position should be vindicated because that position represents "the consistent view of all three federal agencies charged with administration of the relevant statutes." Gov't Br. 16. That is not correct in any respect. With regard to the Treasury Department, the government asserts that the Department has stated that student loans are not subject to the Debt Collection Act's limitations period. Although the Department made a passing general statement in a regulatory preamble that student loans and judgment debts are exceptions to the requirement that a debt subject to offset must "be less than 10 years delinquent," 67 Fed. Reg. 78,936, 78,937 (Dec. 26, 2002), the regulation itself says nothing of the sort. In fact it states only that "[a] debt submitted to [Treasury's Financial Management Service] for collection by centralized offset must be: . . . Less than 10 years delinquent, unless the debt legally may be offset if more than 10 years delinquent[.]" *Id.* at 78,943 (codified at 31 C.F.R. § 285.5(d)(3)(i)(C)). The regulation simply restates the legal issue here; it does not even purport to resolve it. And, not surprisingly, the regulations and the regulatory preamble are entirely silent on the question presented here: whether the 10-year bar applies when an agency is attempting to collect student loan debt from the debtor's *social*

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[1]At one point, the government claims that it "is entitled to deference," Gov't Br. 12, and, at another point, only that its view "is entitled to considerable weight." *Id.* at 16. It does not matter whether these claims represent different degrees of respect, because, for the reasons explained in the text, neither claim should be accepted.

security benefits.

Regarding the Education Department, the government states only that "the Secretary of Education has determined that the Debt Collection Act's ten-year limitation period does not apply to the collection of delinquent student loan debt by administrative offset." Gov't Br. 6 (citing 20 U.S.C. § 1091a(a)(2)). Like the recitation of the supposed views of the Treasury Department, that assertion does nothing more than restate the agency's litigation position — and, again, does not address the specific issue here regarding offset against social security benefits. More fundamentally, the government's citation refers only to what *Congress* supposedly did in 1991 in section 1091a(a)(2), not to any statement of the *agency's* interpretation.

Finally, the government notes, without citation to *any* regulation or agency publication, that the Social Security Administration "agrees" that the Social Security Act does not bar collection of student loan debt that has been outstanding for more than 10 years. Gov't Br. 16. As the government ultimately concedes, its claim for "deference," *id.* at 12, is based on nothing more than the fact that the relevant agencies "have used the Treasury Offset Program to offset Social Security benefits to collect student loan debt, regardless of the age of the debt." *Id.* at 16. But if judicial deference could be based simply on the *existence* of an agency practice, it would be accorded in nearly every case involving a federal agency, making a mockery of the role of the courts in interpreting congressional enactments and of the requirement that deference be accorded only where the agency's position is stated clearly and with a high degree of formality and consistency outside of litigation. In sum, the Court should reject the government's attempt to put its thumb on the scales in this case, when it is doing no more than pushing its litigation position.

3. Moving to the merits of the dispute, the DCIA's 10-year bar on offset authority requires reversal, unless the government is correct that HETA's "notwithstanding" clause, enacted in 1991, may spring forward to capture social security offsets, which were first authorized in 1996. In embracing that temporal leap, the government misconstrues cases interpreting other "notwithstanding" clauses.

The two cases from this Court concerning "notwithstanding" clauses involved the question whether the clause overrode the operation of another provision of the very same enactment or document. *See Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (interpreting the effect of "notwithstanding" clause on another clause within the same contract); *Shomberg v. United States*, 348 U.S. 540, 547-48 (1955) (concerning the effect of "notwithstanding" clause of section 318 of the Immigration and Nationality Act of 1952 on section 405(a) of the same Act, enacted at the same time). Indeed, *Cisneros* explicitly acknowledged that, in *Shomberg*, this Court had concerned itself only with the effect of a law's "notwithstanding" clause on a provision of the same law. *See Cisneros*, 508 U.S. at 18 ("As we have noted previously in construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions *of any other section*[,]" citing *Shomberg*) (emphasis added). Moreover, most lower federal courts to have addressed the question were also focused on a "notwithstanding" clause's effect on a contemporaneously or previously enacted statute. *See, e.g.*, *Conyers v. Merit Sys. Prot. Bd.*, 388 F.3d 1380, 1382-83 (Fed. Cir. 2004) ("notwithstanding" clause in 2001 Aviation and Transportation Security Act barred review by Merit System Protection Board authorized under pre-existing statute); *Campbell v. Minneapolis Pub. Hous. Auth.*, 168 F.3d 1069, 1072, 1074-75 (8th Cir. 1999) ("notwithstanding" clause of

Housing Opportunity Program Extension Act of 1996 overrode previously enacted anti-discrimination laws).

The government cites, but does not otherwise confront, the decisions of the two courts of appeals that have squarely addressed the effect of a "notwithstanding" clause on a subsequently enacted law. *See Ill. Nat'l Guard v. Fed. Labor Relations Auth.*, 854 F.2d 1396 (D.C. Cir. 1988); *N.J. Air Nat'l Guard v. Fed. Labor Relations Auth.*, 677 F.2d 276 (3d Cir. 1982). Those rulings expressly acknowledge what the government in this case denies: that the applicability of a "notwithstanding" clause in that context presents a difficult problem that demands inquiry into the purpose and text of both pieces of legislation. The reasoning of those cases supports Mr. Lockhart's position that HETA's "notwithstanding" clause does not abrogate the Debt Collection Act's 10-year bar on social security offset, because neither HETA's text nor its legislative history indicate a desire to affect such offsets.

Both *Illinois National Guard* and *New Jersey Air National Guard* addressed the interplay of "notwithstanding" clauses in the National Guard Technician Act of 1968, which gave military commanders broad authority over the employment of guard members, and subsequently enacted federal labor statutes, which limit the authority of federal agencies to impose certain labor practices on employees absent collective bargaining. Because the D.C. Circuit heavily relied on the Third Circuit's analysis, *see Ill. Nat'l Guard*, 854 F.2d at 1403, we focus on *New Jersey Air National Guard,* which was cited with approval by this Court in *Cisneros*, 508 U.S. at 18, and is the leading authority on the effect of "notwithstanding" clauses on subsequently enacted legislation.

The Third Circuit explained that the proper analysis of a "notwithstanding" clause's effect on provisions enacted after the clause becomes operative is necessarily different from the

proper analysis of the clause's effect on law existing at the time of the clause's adoption. The Third Circuit used broad language only in connection with a "notwithstanding" clause's effect on *previously* enacted provisions:

> Looking first to the statutory language, we immediately confront the preface to section 709(e) of the Technician Act, which explicitly provides that its terms apply "Notwithstanding any other provision of law ...". A clearer statement is difficult to imagine: section 709(e) must be read to override any conflicting provision of law *in existence at the time that the Technician Act was enacted.*

N.J. Air Nat'l Guard, 677 F.2d at 283 (emphasis omitted and added).[2]

Immediately following that passage, however, the Third Circuit explained that the "notwithstanding" clause's impact on subsequently enacted legislation was not similarly absolute:

> Application of this statement is less certain, however, with respect to a statute such as the Labor-Management Act, adopted after the Technician Act. The drafters of section 709(e) can hardly be said to have had the Labor-Management Act specifically within their contemplation.

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[2]The government quotes part of this language in its brief (at 18), but does not explain that the court was referring only to the effect of a "notwithstanding" clause on *existing* legislation.

Id.[3]

Consequently, the Third Circuit turned to legislative history and a statutory canon to determine the clause's effect on the subsequently enacted labor legislation. *See id.* at 284-85; *accord Ill. Nat'l Guard*, 854 F.2d at 1403-05. Although the Third Circuit ultimately held that the legislative history of the two acts supported application of the "notwithstanding" clause to the subsequently enacted statute, the court relied heavily on history that demonstrated a strong congressional intent to maintain the authority of National Guard military commanders in all matters related to the management of the Guard's employees. *See N.J. Air Nat'l Guard*, 677 F.2d at 283-84. The court also focused on the fact that giving effect to the subsequently enacted labor statute would impliedly repeal the authority that the National Guard commanders had been granted when the "notwithstanding" clause was enacted. *See id.* at 285.

The proper interpretation of "notwithstanding" clauses, as set forth in *New Jersey Air National Guard*, undercuts the government's absolutist position here, because an examination of that decision favors requiring that all social security offsets, including those to recover student loan debt, be subject to the 10-year bar of 31 U.S.C. § 3716(e)(1). As discussed in our opening brief (at 8), HETA's legislative history does not reveal a congressional intent to permit the offset of social security payments to recoup student loan debt that had been outstanding for more than 10 years, which makes sense because, when

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[3]The government's brief (at 18) simply omits these two sentences — which describe exactly what this case is about. Then, without even mentioning the omission, the government's brief quotes the next sentence of the Third Circuit's opinion, a sentence that, when considered out of context, suggests incorrectly that a "notwithstanding" clause affects subsequently enacted legislation just as it would contemporaneous or preexisting legislation.

HETA was enacted in 1991, social security offsets were unlawful. To the contrary, as we explained, HETA's legislative history affirmatively aids Mr. Lockhart because it shows that, in enacting HETA, Congress was motivated by a desire to overrule a circuit court decision that had upheld a 10-year bar on the government's collection of student loan debt through the offset of *tax refunds*, which was authorized under existing law. *See* Pet. Opening Br. 8.

We do not disagree with the government that the plain text of a statute may well allow that statute to be applied in contexts beyond those envisioned by its proponents. Gov't Br. 18-19 (citing cases). But that is beside the point where, as here, the meaning of the statutory text is itself in question. Put otherwise, the issue is *whether* HETA's text, specifically its reference to a "provision of statute, regulation, or administrative limitation," 20 U.S.C. § 1091a(a)(2), reaches any, some, or all *subsequent* enactments. And, under the analysis in *New Jersey Air National Guard*, the fact that the motivation for HETA was to override an *existing* limitations period is highly relevant.

Moreover, contrary to the government's assertion, Gov't Br. 22, the canon disfavoring repeals by implication — which was important to the ruling in *New Jersey Air National Guard* — has no bearing on the question whether HETA's abrogation of limitations periods applies to social security offsets. Until the DCIA's passage in 1996, no student loan debts could be offset against social security benefits, so applying the 10-year bar of 31 U.S.C. § 3716(e)(1) to social security offsets for collection of student loan debt does not repeal any authority that Congress had provided in HETA. In fact, as Mr. Lockhart explained in his opening brief (at 9-10), the DCIA and its legislative history make clear that Congress intended that the power to attach social security benefits be carefully circumscribed, which is inconsistent with allowing HETA's

"notwithstanding" clause to override the 10-year bar.[4]

In addition, other aspects of the DCIA also demonstrate that HETA's "notwithstanding" clause was not intended to reach social security offsets. Our opening brief (at 21-22) explains that Congress focused specifically on social security offset in the DCIA, while, at the same time, it retained the 10-year bar on offset authority. The government caricatures Mr. Lockhart's argument, suggesting that it relies merely on the re-designation of the 10-year bar from one subsection of the Debt Collection Act to another. *See* Gov't Br. 20-21. That is not what we said. As we explained, in 1996, Congress carefully reviewed the Debt Collection Act. In the section of the DCIA immediately before the section authorizing social security offsets, Congress revisited the provision of the Debt Collection Act that describes situations in which offset authority "does not apply." 31 U.S.C. § 3716(e). In subsection 3716(e)(1), Congress retained the 10-year bar, while in subsection 3716(e)(2), it eliminated the prohibition on administrative offset in situations where another statute provides for administrative offset of the claim or type of claim. *See* Pet. Opening Br. 21-

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[4]For much the same reason, the government's invocation of the doctrine that Congress is assumed to legislate with the knowledge of existing legislation in mind is inapposite, and, indeed, circular. *See* Gov't Br. 20 (citing *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1996)). It makes no sense to say that the DCIA's 1996 extension of offset authority to social security benefits was adopted against a backdrop that included *the government's* understanding of the breadth of HETA's "notwithstanding" clause, because the issue here is *whether* that understanding is correct. For the reasons stated in the text, it is sensible to believe that Congress did not intend HETA to apply to social security offsets because there was no authority for such offsets when HETA was enacted. Thus, charging Congress with "knowledge of the then-existent Code," Gov't Br. 20, when it enacted the DCIA in 1996, undermines, not advances, the government's position in this case.

22. This congressional focus on the Debt Collection Act as a whole, on authorizing social security offset, and on the very subsection of the Act containing the 10-year bar, forcefully underscores that the 10-year bar, and not HETA, applies to offsets of social security benefits to collect student loan debt.

4. Finally, in his opening brief, Mr. Lockhart relied on the canon of statutory construction requiring that an amendment to a law (here, the 1996 amendment extending the Debt Collection Act to social security offsets) be read to incorporate the whole law, including its original characteristics (here, as relevant, the Debt Collection Act's 10-year time bar). Pet. Opening Br. 22-23 (citing 1A *Sutherland Statutory Construction* § 22.34 (6th ed. 2002) and cases). The government's reason for rejecting the canon's applicability here is that the DCIA did not expressly repeal HETA's abrogation of limitations periods for student loan collection. *See* Gov't Br. 21. But that assertion sidesteps the statutory canon and simply repeats the government's basic position that HETA's "notwithstanding" clause is omnipotent. The canon, however, means that the DCIA, which authorized social security offsets for the first time, should be construed as having enacted all of the provisions of the Debt Collection Act into which it was inserted, including the provision that offset authority "does not apply" "to a claim ... that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

B. The Government's Position Cannot Be Reconciled With the Social Security Act's Anti-Attachment Provision.

1. The government misapprehends Mr. Lockhart's reliance on the Social Security Act's anti-attachment provision, 42 U.S.C. § 407(a), and its express reference requirement. *Id.* § 407(b). Mr. Lockhart did not claim that an "additional reference to Section [4]07 [was] required in [HETA's] Section

1091a(a) before that provision [could] be applied" to offset social security benefits to recover student loan debt that has been outstanding for more 10 years. Gov't Br. 24. To be sure, if HETA had included an express reference to the anti-attachment provision, it would have authorized the offsets that the government seeks here. The fundamental problem with the government's position, however, does not relate to the fact that an express reference is missing from HETA, but, rather, to where and how the express reference was, in fact, employed by Congress.

The express reference at issue in this case is part of the DCIA, 31 U.S.C. § 3716(c)(3)(A)(i), and that statute contains a 10-year bar on offset authority. *Id.* § 3716(e)(1). The difficulty for the government is that neither the DCIA, HETA, nor any other statute expressly referring to 42 U.S.C. § 407 authorizes collection by offset of student loan debt, or any other debt, that has been outstanding for more than 10 years.[5]

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[5]The government also suggests that the offset program may not constitute "legal process" within the meaning of 42 U.S.C. § 407(a), and thus that social security benefits may be offset without any express reference to 42 U.S.C. § 407. *See* Gov't Br. 23-24 n.4 (citing *Wash. State Dep't of Soc. & Health Servs. v. Keffeler*, 537 U.S. 371 (2003)). The government then says that the Court "need not decide" that issue here because the Debt Collection Act's express reference is sufficient for it to prevail. *Id.* There is no basis for injecting this issue into this case. First of all, the government never raised the issue below, and, therefore, it is waived. *See, e.g., Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002). Indeed, not only did the government never raise the issue, as Mr. Lockhart's opening brief explained (at 17), the Department of Education acknowledged both in its own regulations and in prior appellate litigation that, without an express reference to 42 U.S.C. § 407, social security benefits may not be offset. *See also* Gov't Br. 7 ("The 1996 amendments to the Debt Collection Act also explicitly extended the offset program to encompass Social Security benefits."). In any event, as the government all but concedes, Gov't Br. 24

(continued...)

2. The government also misconstrues Mr. Lockhart's discussion of the relationship between failed legislation in the 108th Congress and the absence of an express reference to 42 U.S.C. § 407. As explained in our opening brief (at 10-11), this legislation would have amended the Debt Collection Act to abrogate limitations periods and make an express reference to the anti-attachment provision, thus authorizing the offset of social security benefits to collect debts that have been outstanding for more than 10 years. Our point in citing the proposal was neither that Congress's failure to pass this legislation was a barometer of the intent of earlier Congresses, nor that the 108th Congress had taken a position on the dispute at issue in this case, as the government claims we maintain. Rather, the text of the proposed legislation simply indicates what the current Administration, which proposed the provision in its fiscal year 2005 budget, *see* Pet. Opening Br. 11, and the legislation's congressional proponents correctly believed was necessary to achieve the result that the government seeks here.

The proposed legislation would, in words similar to HETA's, 20 U.S.C. § 1091a(a)(2), have amended the Debt Collection Act, 31 U.S.C. § 3716(e), to eliminate any time bar on offsets, but, unlike HETA, *it would have contained the necessary express reference to the Social Security Act's anti-attachment provision.* Moreover, the new express reference would have been in addition to the express reference contained,

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[5](...continued)
n.4 , the offset process is a highly formal procedure that easily qualifies as "legal process" under *Keffeler*, 537 U.S. at 385 (equating "legal process" with "some judicial or quasi-judicial mechanism," even if not "an elaborate one"). *See* 31 C.F.R. § 285.5(d)(6)(ii) (Treasury Department due process requirements for creditor agencies); 34 C.F.R. §§ 30.22-.26 (Department of Education offset procedures); Pet. Opening Br. 6, 21 (describing due process procedures).

since 1996, in 31 U.S.C. § 3716(c)(3)(A)(i). The proposed legislation thus acknowledged exactly what other cases have held, *see Lee v. Paige*, 376 F.3d 1179, 1180 (8th Cir. 2004), *pet. for cert. pending sub. nom., Spellings v. Lee*, No. 04-1139 (U.S. filed Feb. 25, 2004); *Guillermety v. Sec'y of Educ.*, 241 F. Supp.2d 727, 755-56 (E.D. Mich.2002), and Mr. Lockhart maintains: An express reference to section 407 can authorize the attachment of social security benefits, *i.e.*, it can override the "all-inclusive" anti-attachment provision of 42 U.S.C. § 407(a), *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415 (1973), but only to the extent that the attachment is consistent with the statute that authorizes it. Therefore, in this case, the express reference of 31 U.S.C. § 3716(c)(3)(A)(i) is necessarily constrained by the statute in which it appears, and thus carries with it the 10-year bar contained in the very same section of the Debt Collection Act, 31 U.S.C. § 3716(e)(1).

The government also claims that the 2004 legislation is irrelevant because it would have abrogated limitations with respect to all types of offsets and all sources of debt. Gov't Br. 25. That is true, but immaterial. For present purposes, the legislation is significant only because it contained an express reference (and because it shows that Congress can easily effect the result the government seeks here if it wishes to do so).[6] The express reference was required by 42 U.S.C. § 407(b) to authorize recovery of social security benefits to collect debt outstanding for more than 10 years, but it was *not* necessary to

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[6]To explain that a "notwithstanding" clause does not ineluctably affect later-enacted legislation and to illustrate the ease with which Congress could have legislated the result the government seeks in this case, Mr. Lockhart's opening brief points to legislation, including the Social Security Act's express reference provision, 42 U.S.C. § 407(b), that explicitly targets future congressional enactments. *See* Pet. Opening Br. 19-20. Tellingly, the government's brief does not respond on this score.

abrogate the 10-year bar on any other type of collection. Thus, Mr. Lockhart's point remains undisturbed: In HETA in 1991, or in the DCIA in 1996, Congress could have eliminated the time bar for collecting student loans by offsetting social security, using the same language that was proposed and rejected in 2004. It did not do so, and, therefore, the government lacks authority to offset Mr. Lockhart's social security benefits to collect student loans that have been outstanding for more than 10 years.

C. The Government's Policy Arguments Are Irrelevant to the Proper Resolution of this Case.

The government ends its brief by maintaining that student loan defaults have a significant budgetary impact and that social security beneficiaries are protected by safeguards that protect their benefits from undue offset. Gov't Br. 27-32. Assuming for present purposes that both of these statements are correct, they are not relevant, because they tell us nothing about whether Congress, as the government maintains, silently repealed the general 10-year bar on a small subset of offsets — offsets of social security benefits to collect student loans — when it enacted the DCIA in 1996. After all, prior to 1996, a full five years after the enactment of HETA, whose purpose was to extend the period for collection of student loan debt, it is undisputed that the government lacked authority to offset social security benefits *at any time to collect any debt*. Thus, it cannot be that HETA's enactment was motivated by a desire to improve the government's fiscal health through the offset of social security benefits. Moreover, even today, the government generally lacks authority to use any legal process, other than offset, to recover student loan debt (or any other debt) from a recipient's social security benefits, because Congress has never enacted a comprehensive override of the anti-attachment

provision, 42 U.S.C. § 407(a). Thus, not surprisingly, the government's extended discussion of the impact on the treasury of student loan debt does not even attempt to show, let alone demonstrate, a link between that discussion and the narrow issue of congressional intent before this Court.

The government speculates that offsetting social security benefits is an important component of the government's student loan debt recovery program, yet its statistics do not back up that speculation. The government asserts, for instance, that student loan defaults "increased by more than three hundred percent between 1972 and 1976," Gov't Br. 3 (quoting *Fed. Credit Union v. DelBonis*, 72 F.3d 921, 936 (1st Cir. 1995)), yet, again, during that time, the government did not have authority to recover student loan debt from social security benefits. The government also maintains that of the $33.6 billion in delinquent student loans, Gov't Br. 3, approximately $5.7 billion of it is both "over ten years old" and has been certified by the Department of Education to the Department of the Treasury for collection. Gov't Br. 28. This statement suggests that much of the debt may be collectible by offsetting social security benefits because it has been outstanding for less than 10 years.

To be sure, because of the age of many social security recipients — at least those who receive social security *retirement* benefits — some student loan debt will have been outstanding for more than 10 years before the debtor is eligible for social security benefits. *See* Gov't Br. 29. On the other hand, Congress may well have understood that reality and decided to strike a balance between collection and forbearance different from that which the government urges on the Court here. Given that the aggregate debt reduction achieved by offsetting social security benefits to collect student loan debt that has been outstanding for more than 10 years would likely

be quite small, Congress could have chosen to maintain the 10-year bar in light of the significant hardship that would be wrought on social security recipients who are elderly or disabled. *Guillermety*, 241 F. Supp. 2d at 758-59 (describing severe financial harm).

But, again, these questions of policy are both speculative and irrelevant because the government's need to collect outstanding student loan debt, however great, cannot create statutory authority that does not exist. If Congress wishes to allow the government to collect student loan debt from social security benefits no matter how old the debt (and no matter how aged or impoverished the recipient), it may do so, just as the Administration proposed, and the Congress rejected, late last year. Until then, however, collection efforts like those at issue here are impermissible.

CONCLUSION

For the reasons stated above and in petitioner's opening brief, the decision of the Ninth Circuit should be reversed.

Respectfully submitted,

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LOCKHART *v.* UNITED STATES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–881. Argued November 2, 2005—Decided December 7, 2005

In 2002, the Government began withholding a portion of petitioner's Social Security payments to offset his debt on federally reinsured student loans that were more than 10 years overdue. Petitioner sued, arguing that the offset was barred by the 10-year statute of limitations of the Debt Collection Act of 1982, 31 U. S. C. §3716(e)(1). The Social Security Act generally exempts benefits from attachment or other legal process, 42 U. S. C. §407(a), and provides that "[n]o other provision of law . . . may be construed to . . . modify . . . this section except to the extent that it does so by express reference," §407(b). The Higher Education Technical Amendments of 1991 eliminated time limitations on suits to collect student loans. 20 U. S. C. §1091a(a)(2)(D). In 1996, the Debt Collection Improvement Act subjected Social Security benefits to offset, "[n]otwithstanding [§407]." 31 U. S. C. §3716(c)(3)(A)(i). The District Court dismissed petitioner's complaint, and the Ninth Circuit affirmed.

Held: The United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years. Pp. 3–5.

(a) The Debt Collection Improvement Act makes Social Security benefits subject to offset, providing the sort of express reference that §407(b) says is necessary to supersede the anti-attachment provision. P. 3.

(b) The Higher Education Technical Amendments remove the 10-year limit that would otherwise bar offsetting petitioner's Social Security benefits to pay off his student loan debt. Debt collection by Social Security offset was not authorized until five years after this abrogation of time limits, but the plain meaning of the Higher Education Technical Amendments must be given effect even though

Syllabus

Congress may not have foreseen all of its consequences. *Union Bank* v. *Wolas*, 502 U. S. 151, 158. Though the Higher Education Technical Amendments, unlike the Debt Collection Improvement Act, do not explicitly mention §407, an express reference is only required to authorize attachment in the first place. Pp. 3–4.

(c) Though the Debt Collection Improvement Act retained the Debt Collection Act's general 10-year bar on offset authority, the Higher Education Technical Amendments retain their effect as a limited exception to the Debt Collection Act time bar in the student loan context. The Court declines to read any meaning into a failed 2004 congressional effort to amend the latter Act to explicitly authorize offset of debts over 10 years old. See, *e.g.*, *United States* v. *Craft*, 535 U. S. 274, 287. Pp. 4–5.

376 F. 3d 1027, affirmed.

O'CONNOR, J., delivered the opinion for a unanimous Court. SCALIA, J., filed a concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 04–881

JAMES LOCKHART, PETITIONER *v.* UNITED STATES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[December 7, 2005]

JUSTICE O'CONNOR delivered the opinion of the Court.

We consider whether the United States may offset Social Security benefits to collect a student loan debt that has been outstanding for over 10 years.

I

A

Petitioner James Lockhart failed to repay federally reinsured student loans that he had incurred between 1984 and 1989 under the Guaranteed Student Loan Program. These loans were eventually reassigned to the Department of Education, which certified the debt to the Department of the Treasury through the Treasury Offset Program. In 2002, the Government began withholding a portion of petitioner's Social Security payments to offset his debt, some of which was more than 10 years delinquent.

Petitioner sued in Federal District Court, alleging that under the Debt Collection Act's 10-year statute of limitations, the offset was time barred. The District Court dismissed the complaint, and the Court of Appeals for the Ninth Circuit affirmed. 376 F. 3d 1027 (2004). We

granted certiorari, 544 U. S. ___ (2005), to resolve the conflict between the Ninth Circuit and the Eighth Circuit, see *Lee* v. *Paige*, 376 F. 3d 1179 (CA8 2004), and now affirm.

B

The Debt Collection Act of 1982, as amended, provides that, after pursuing the debt collection channels set out in 31 U. S. C. §3711(a), an agency head can collect an outstanding debt "by administrative offset." §3716(a). The availability of offsets against Social Security benefits is limited, as the Social Security Act, 49 Stat. 620, as amended, makes Social Security benefits, in general, not "subject to execution, levy, attachment, garnishment, or other legal process." 42 U. S. C. §407(a). The Social Security Act purports to protect this anti-attachment rule with an express-reference provision: "No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." §407(b).

Moreover, the Debt Collection Act's offset provisions generally do not authorize the collection of claims which, like petitioner's debts at issue here, are over 10 years old. 31 U. S. C. §3716(e)(1). In 1991, however, the Higher Education Technical Amendments, 105 Stat. 123, sweepingly eliminated time limitations as to certain loans: "Notwithstanding any other provision of statute . . . no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken," 20 U. S. C. §1091a(a)(2), for the repayment of various student loans, including the loans at issue here, §1091a(a)(2)(D).

The Higher Education Technical Amendments, by their terms, did not make Social Security benefits subject to offset; these were still protected by the Social Security

Act's anti-attachment rule. Only in 1996 did the Debt Collection Improvement Act—in amending and recodifying the Debt Collection Act—provide that, "[n]otwithstanding any other provision of law (including [§407] . . .)," with a limited exception not relevant here, "all payment due an individual under . . . the Social Security Act . . . shall be subject to offset under this section." 31 U. S. C. §3716(c)(3)(A)(i).

II

The Government does not contend that the "notwithstanding" clauses in both the Higher Education Technical Amendments and the Debt Collection Improvement Act trump the Social Security Act's express-reference provision. Cf. *Marcello* v. *Bonds*, 349 U. S. 302, 310 (1955) ("Exemptions from the terms of the . . . Act are not lightly to be presumed in view of the statement . . . that modifications must be express[.] But . . . [u]nless we are to require the Congress to employ magical passwords in order to effectuate an exemption from the . . . Act, we must hold that the present statute expressly supersedes the . . . provisions of that Act" (citation omitted)); *Great Northern R. Co.* v. *United States*, 208 U. S. 452, 465 (1908).

We need not decide the effect of express-reference provisions such as §407(b) to resolve this case. Because the Debt Collection Improvement Act clearly makes Social Security benefits subject to offset, it provides exactly the sort of express reference that the Social Security Act says is necessary to supersede the anti-attachment provision.

It is clear that the Higher Education Technical Amendments remove the 10-year limit that would otherwise bar offsetting petitioner's Social Security benefits to pay off his student loan debt. Petitioner argues that Congress could not have intended in 1991 to repeal the Debt Collection Act's statute of limitations as to offsets against Social Security benefits—since debt collection by Social Security

offset was not authorized until five years later. Therefore, petitioner continues, the Higher Education Technical Amendments' abrogation of time limits in 1991 only applies to then-valid means of debt collection. We disagree. "The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." *Union Bank* v. *Wolas*, 502 U. S. 151, 158 (1991).

Petitioner points out that the Higher Education Technical Amendments, unlike the Debt Collection Improvement Act, do not explicitly mention §407. But §407(b) only requires an express reference to authorize attachment in the first place—which the Debt Collection Improvement Act has already provided.

III

Nor does the Debt Collection Improvement Act's 1996 recodification of the Debt Collection Act help petitioner. The Debt Collection Improvement Act, in addition to adding offset authority against Social Security benefits, retained the Debt Collection Act's general 10-year bar on offset authority. But the mere retention of this previously enacted time bar does not make the time bar apply in all contexts—a result that would extend far beyond Social Security benefits, since it would imply that the Higher Education Technical Amendments' abrogation of time limits was now a dead letter as to any kind of administrative offset. Rather, the Higher Education Technical Amendments retain their effect as a limited exception to the Debt Collection Act time bar in the student loan context.

Finally, we decline to read any meaning into the failed 2004 effort to amend the Debt Collection Act to explicitly authorize offset of debts over 10 years old. See H. R. 5025, 108th Cong., 2d Sess., §642 (Sept. 8, 2004); S. 2806, 108th Cong., 2d Sess., §642 (Sept. 15, 2004). "[F]ailed legislative

proposals are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *United States* v. *Craft*, 535 U. S. 274, 287 (2002) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990)). In any event, it is unclear what meaning we could read into this effort even if we were inclined to do so, as the failed amendment—which was not limited to offsets against Social Security benefits—would have had a different effect than the interpretation we advance today.

Therefore, we affirm the judgment of the Ninth Circuit.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 04–881

JAMES LOCKHART, PETITIONER *v.* UNITED STATES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[December 7, 2005]

JUSTICE SCALIA, concurring.

I agree with the Court that, even if the express-reference requirement in §207(b) of the Social Security Act is binding, it has been met here; and I join the opinion of the Court, because it does not imply that the requirement *is* binding. I would go further, however, and say that it is not.

"[O]ne legislature," Chief Justice Marshall wrote, "cannot abridge the powers of a succeeding legislature." *Fletcher* v. *Peck*, 6 Cranch 87, 135 (1810). "The correctness of this principle, so far as respects general legislation," he asserted, "can never be controverted." *Ibid.* See also *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) (unlike the Constitution, a legislative Act is "alterable when the legislature shall please to alter it"); 1 W. Blackstone, Commentaries on the Laws of England 90 (1765) ("Acts of parliament derogatory from the power of subsequent parliaments bind not"); T. Cooley, Constitutional Limitations 125–126 (1868) (reprint 1987). Our cases have uniformly endorsed this principle. See, *e.g.*, *United States* v. *Winstar Corp.*, 518 U. S. 839, 872 (1996) (plurality opinion); *Reichelderfer* v. *Quinn*, 287 U. S. 315, 318 (1932) ("[T]he will of a particular Congress . . . does not impose itself upon those to follow in succeeding years"); *Manigault* v. *Springs*, 199 U. S. 473, 487 (1905); *Newton* v.

Commissioners, 100 U. S. 548, 559 (1880) (in cases involving *"public interests"* and *"public laws,"* "there can be . . . no irrepealable law"); see generally 1 L. Tribe, American Constitutional Law §2–3, p. 125, n. 1 (3d ed. 2000).

Among the powers of a legislature that a prior legislature cannot abridge is, of course, the power to make its will known in whatever fashion it deems appropriate—including the repeal of pre-existing provisions by simply and clearly contradicting them. Thus, in *Marcello* v. *Bonds*, 349 U. S. 302 (1955), we interpreted the Immigration and Nationality Act as impliedly exempting deportation hearings from the procedures of the Administrative Procedure Act (APA), despite the requirement in §12 of the APA that "[n]o subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly," 60 Stat. 244. The Court refused "to require the Congress to employ magical passwords in order to effectuate an exemption from the Administrative Procedure Act." 349 U. S., at 310. We have made clear in other cases as well, that an express-reference or express-statement provision cannot nullify the unambiguous import of a subsequent statute. In *Great Northern R. Co.* v. *United States*, 208 U. S. 452, 465 (1908), we said of an express-statement requirement that "[a]s the section . . . in question has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly *or by necessary implication* in a subsequent enactment." (Emphasis added.) A subsequent Congress, we have said, may exempt itself from such requirements by "fair implication"—that is, *without* an express statement. *Warden* v. *Marrero*, 417 U. S. 653, 659–660, n. 10 (1974). See also *Hertz* v. *Woodman*, 218 U. S. 205, 218 (1910).

To be sure, legislative express-reference or express-statement requirements may function as background canons of interpretation of which Congress is presump-

tively aware. For example, we have asserted that exemptions from the APA are "not lightly to be presumed" in light of its express-reference requirement, *Marcello*, *supra*, at 310; see also *Shaughnessy* v. *Pedreiro*, 349 U. S. 48, 51 (1955). That assertion may add little or nothing to our already-powerful presumption against implied repeals.

> "We have repeatedly stated . . . that absent a clearly established congressional intention, repeals by implication are not favored. An implied repeal will only be found where provisions in two statutes are in irreconcilable conflict, or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute." *Branch* v. *Smith*, 538 U. S. 254, 273 (2003) (plurality opinion) (internal quotation marks and citations omitted).

See also *Morton* v. *Mancari*, 417 U. S 535, 551 (1974). When the plain import of a later statute directly conflicts with an earlier statute, the later enactment governs, *regardless* of its compliance with any earlier-enacted requirement of an express reference or other "magical password."

For the reasons set forth in the majority opinion, in the Higher Education Technical Amendments and the Debt Collection Improvement Act, Congress unambiguously authorized, without exception, the collection of 10-year-old student-loan debt by administrative offset of Government payments. In doing so, it flatly contradicted, and thereby effectively repealed, part of §207(a) of the Social Security Act. This repeal is effective, regardless of whether the express-reference requirement of §207(b) is fulfilled.

Despite our jurisprudence on this subject, it is regrettably not uncommon for Congress to attempt to burden the future exercise of legislative power with express-reference and express-statement requirements. See, *e.g.*, 1 U. S. C. §109; 5 U. S. C. §559; 25 U. S. C. §1735(b); 42 U. S. C.

§2000bb–3(b); 50 U. S. C. §§1547(a)(1), 1621(b). In the present case, it might seem more respectful of Congress to refrain from declaring the invalidity of the express-reference provision. I suppose that would depend upon which Congress one has in mind: the prior one that enacted the provision, or the current one whose clearly expressed legislative intent it is designed to frustrate. In any event, I think it does no favor to the Members of Congress, and to those who assist in drafting their legislation, to keep secret the fact that such express-reference provisions are ineffective.